

CITY OF NEWPORT BEACH
HEARING OFFICER STAFF REPORT

May 30, 2013
Agenda Item No. 1

TO: Judge John C. Woolley, Hearing Officer

SUBJECT: Bakman Residence - Reasonable Accommodation (PA2011-118)
219 Diamond Avenue

- Reasonable Accommodation No. RA2011-002

APPLICANT: Jane Bakman, Property Owner

PLANNER: Javier S. Garcia AICP, Senior Planner
(949) 644-3206, jgarcia@newportbeachca.gov

PROJECT SUMMARY

A Reasonable Accommodation application for relief from the requirements of Newport Beach Municipal Code (NBMC) Section 20.18.030 (Residential Districts: Land use Regulations) to allow an addition to an existing duplex that will exceed the permitted floor area specified by the R-BI District Development Regulations. The application also includes a variance to exceed the maximum floor area, but this is not under consideration by the Hearing Officer.

RECOMMENDATION

Staff recommends the Hearing Officer conduct a public hearing, receive testimony from the applicant, the City staff, and members of the public. At the conclusion of the public hearing, it is recommended that the Hearing Officer:

1. Adopt the attached Resolution (Attachment No. 1) denying Reasonable Accommodation No. RA2011-002.

INTRODUCTION

Project Setting

The subject property is located at 219 Diamond Avenue. The property is zoned R-BI (Two-Unit Residential, Balboa Island) and is developed with a two-story duplex with an attached two-car garage. Surrounding properties include single- and two-unit residential uses. The first floor unit consists of a bedroom, bathroom, kitchen, and living/dining room. The second floor unit consists of four bedrooms, two bathrooms, kitchen, and living room. The total square footage of the duplex is 2,660 square feet. However, the structure is undergoing a remodel that will result in a net addition of 246 square feet for a total of 2,906 square feet.

VICINITY MAP

**219 DIAMOND AVENUE
BAKMAN PROPERTY**



LOCATION	GENERAL PLAN AND COASTAL LAND USE PLAN	ZONING	CURRENT USE
ON-SITE	RT & RT-E, Two-Unit Residential	R-BI, Two-Unit Residential, Balboa Island	Duplex
NORTH, SOUTH, EAST AND WEST	RT & RT-E, Two-Unit Residential	R-BI, Two-Unit Residential, Balboa Island	Single Family and Two- Unit Residential Uses

Project Description

The applicant is seeking additional floor area that will exceed the permitted floor area specified by the R-BI District Development Regulations to serve a disabled person that will reside on the property. In compliance with Federal and State fair housing laws, Section 20.52.070 of the Zoning Code provides for reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with any disability an equal opportunity to use and enjoy a dwelling.

The proposed project would remove the existing ground floor bedroom and bathroom to enlarge the dining room and kitchen. The existing breezeway located between the dwelling and the garage would be enclosed to accommodate a new bathroom and adjacent storage area. Interior changes are also proposed to increase the size of the living room. The project was originally proposed to occur as two phases, however, construction requirements have caused the project to be combined into a single project.

Section 20.18.030 of the NBMC, Table 2-3, establishes a Floor Area Limit of 1.5 times the buildable area plus 200 square feet (for garage space) for the subject property, which calculates out to 2,720 square feet. The proposed addition of 246 square feet brings the total floor area of the building to approximately 1.68 times the buildable area or 2,906 square feet. This exceeds the allowable floor area by 186 square feet (2,906 sq. ft. proposed, minus 2,720 sq. ft. allowed = 186 sq. ft.).

DISCUSSION

Analysis

In compliance with Federal and State fair housing laws, reasonable accommodations in the City's zoning and land use regulations, policies, and practices are permitted to provide an individual with any disability an equal opportunity to use and enjoy a dwelling.

The applicant contends that the additional square footage is needed to locate a convenient bathroom on the ground floor. A physician's letter (Attachment No. 3) has been provided by the applicant supporting this claim and the need for convenient bathroom access. The statement of the physician asks for "a manageable living environment that suits her handicaps/disabilities." The accommodation expressed by the physician indicates it is "medically necessary that ...an accessible downstairs bathroom and an easily accessible storage space" be provided within close proximity of the living area of the lower floor."

The issue at hand is whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling. A ground floor bathroom is depicted on the existing floor plan. The physician's statement does not establish any particular minimum size for the bathroom or the storage area, nor does it state these amenities should be handicap accessible. No evidence has been submitted that indicates why the current ground floor bathroom cannot accommodate the needs of the disabled person or why the objectives of the applicant cannot be achieved and remain within the development standards, including floor area limits.

Required Findings

The Hearing Officer is designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. Section 20.52.070 (D)(2) requires that all of the following findings be made in order to approve the reasonable accommodation:

1. ***That the requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.***
2. ***That the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.***

3. ***That the requested accommodation will not impose an undue financial or administrative burden on the City as “undue financial or administrative burden” is defined in Fair Housing Laws and interpretive case law.***
4. ***That the requested accommodation will not result in a fundamental alteration in the nature of the City’s zoning program, as “fundamental alteration” is defined in Fair Housing Laws and interpretive case law.***
5. ***That the requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.***

Upon review of the application, staff concludes that Findings 1, 3, 4, and 5 can be made. However, the fact that there is an existing ground floor bathroom raises the question of whether the requested relocation of the bathroom and the addition of the storage area are necessary to provide the disabled person equal opportunity to use and enjoy the dwelling.

Factors for Consideration

NBMC Section 20.52.070 (D-3) allows the Hearing Officer to consider the following factors in determining whether the requested accommodation is necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling:

- A. *Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability.*

If the requested accommodation is granted, the disabled person will be able to access a new ground-level bathroom, which the applicant claims would enhance their quality of life. However, this access is currently provided by the existing ground floor bathroom. Any modifications necessary to make the existing bathroom accessible can be accommodated within the existing floor area. Furthermore, the proposed 189-square-foot breezeway addition proposed is in excess of that necessary to provide an accessible bathroom and therefore could be reduced.

- B. *Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation.*

As stated above, the existing ground-level bathroom could be utilized as-is or modified, if necessary, to provide access to the disabled person within the existing floor area limit. Therefore, denying the accommodation would not deny the disabled person equal opportunity to enjoy the housing type of choice.

- C. *In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants.*

- D. *In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.*

The proposed use of the property is a two-unit residential building and not as a residential care facility.

With consideration of these factors, staff has determined that the requested accommodation is not necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling. The justification presented does not support the proposed size and location of the additions that are the subject of the accommodation request. As Finding No. 2 cannot be made, staff recommends that the request for reasonable accommodation be denied since there is adequate area available within the building to accommodate the person intended and not exceed the floor area limitations of the Zoning District.

Alternatives

1. The Hearing Officer may approve alternative reasonable accommodations that provide an equivalent level of benefit to the applicant. In this case, the requested increase in floor area could be reduced to the minimum necessary to accommodate the medical needs of the disabled person.
2. The Hearing Officer may approve the floor area as requested based on the testimony presented at the hearing, his review of the application, and other supporting information.


Environmental Review

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines).

Public Notice


Notice of this hearing was published in the Daily Pilot, mailed to property owners and occupants within 300 feet of the property and posted at the site a minimum of 10 days in advance of this hearing consistent with the Municipal Code. Additionally, the item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

Prepared by:



Javier S. Garcia, AICP,
Senior Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- 1 Draft Resolution for Denial
- 2 Applicant Correspondence
- 3 Physician's letter (CONFIDENTIAL, available only to the Hearing Officer)
- 4 Site Photographs
- 5 Revised and Original Project Plans

Attachment No. 1

Draft Resolution for Denial

RESOLUTION NO. HO2013-###

**A RESOLUTION OF THE HEARING OFFICER OF THE CITY
OF NEWPORT BEACH DENYING REASONABLE
ACCOMMODATION NO. RA2011-002 FOR ADDITIONS TO
AN EXISTING TWO-UNIT RESIDENTIAL STRUCTURE TO
ACCOMMODATE A DISABLED PERSON, LOCATED AT
219 DIAMOND AVENUE (PA2011-118)**

THE HEARING OFFICER FOR THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Chapter 20.52 of the Newport Beach Municipal Code (NBMC) sets forth a process to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling.
2. An application was filed by Jane Bakman, property owner, with respect to property located at 219 Diamond Avenue, and legally described as Lot 28, Block 10, Section Three, Balboa Island Tract, requesting accommodation from the requirements of Newport Beach Municipal Code (NBMC) Section 20.18.030, (Residential Zoning Districts Land Uses and Permit Requirements) to allow additions and alterations to an existing two-unit dwelling in excess of the floor area limit.
3. The subject property is located in the R-BI (Two-Unit Residential, Balboa Island) Zoning District.
4. A public hearing was held on May 30, 2013, in the Balboa Island Conference Room, 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the NBMC and other applicable laws. Evidence, both written and oral, was presented and considered at this meeting.
5. The hearing was presided over by Hon. John C. Woolley, retired Judge (California Superior Court, Orange County), Hearing Officer for the City of Newport Beach.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

SECTION 3. FINDINGS.

In accordance with Section 20.52.070 (D.2) of the Newport Beach Municipal Code, all of the following findings must be made in order to approve a reasonable accommodation:

1. **Required Finding: The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.**

Facts in Support of Finding: The applicant submitted a statement signed under penalty of perjury that the property will be occupied by a person with a disability and requires accommodation.

2. **Required Finding: The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.**

Facts Do Not Support the Finding:

1. An accessible bathroom is currently provided by the existing ground floor bathroom. Any modifications necessary to make the existing bathroom accessible can be accommodated within the existing permitted floor area.
2. The proposed 189-square-foot breezeway addition proposed is in excess of that necessary to provide an accessible bathroom.
3. With consideration of the factors provided by NBMC Section 20.52.070 (D-3), the requested accommodation is not necessary to provide the disabled individual an equal opportunity to use and enjoy a dwelling. The justification presented does not support the proposed size and location of the additions that are the subject of the accommodation request.

3. ***Required Finding: That the requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.***

Facts in Support of Finding: Allowing the construction of additions to the dwelling unit would not impose an undue financial or administrative burden on the City. The administrative costs of processing the building permit will be offset by normal building permit fees.

4. ***Required Finding: That the requested accommodation will not result in a fundamental alteration in the nature of a City program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.***

Facts in Support Finding:

- a. The proposed floor area is consistent with surrounding residential properties with similar sized structures which may also exceed allowed floor area. The request to exceed the floor area is not related to the use of the property, which remains residential. The mass and bulk of the proposed structure will be within the perimeter of the existing building footprint and will not be discernibly abrupt in scale from the surrounding structures which may comply with the floor area limitations.
 - b. The proposed additional square footage would not intensify the existing two-unit residential use. Therefore, the increase in floor area would have no affect on traffic or parking in the vicinity; although the property is nonconforming with regard to parking since it only provides one parking space per dwelling unit.
 - c. The increase in floor area would not conflict with the existing residential uses on site or in the neighborhood.
 - d. There is no intention to operate the dwelling as a residential care facility. Thus, the granting of the reasonable accommodation request will not create an institutionalized environment.
5. ***Finding: The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.***

Facts in Support of Finding: The property is occupied by a duplex which is consistent with the zoning district in which it is located. The addition would be constructed in accordance with the required Building and Safety Code, therefore, the proposed project

would not pose a threat to the health or safety of other individuals or substantial physical damage to the property of others.

As Finding No. 2 cannot be made, the reasonable accommodation must be denied.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. The Hearing Officer of the City of Newport Beach hereby denies Reasonable Accommodation No. RA2011-002.

Section 2. This action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

PASSED, DENIED AND ADOPTED THIS _____ DAY OF _____, 2013.

By: _____
Hon. John C. Woolley, retired Judge
(California Superior Court, Orange County)
Hearing Officer for the City of Newport Beach

ATTEST:

City Clerk

Attachment No. 2

Applicant Correspondence



CITY OF NEWPORT BEACH

JUN 06 2011

Request for Reasonable Accommodation
Supplemental Information Required

CITY OF NEWPORT BEACH

Planning Department
3300 Newport Boulevard
Newport Beach, California 92658-8913
(949) 644-3200

Application Number

RAZON-118

To aid staff in determining that the necessary findings can be made in this particular case as set forth in Chapter 20.98 of the Municipal Code, please answer the following questions with regard to your request (Please attach on separate sheets, if necessary):

Name of Applicant

Joe Bakman

If provider of housing, name of facility, including legal name of corporation

(Mailing Address of Applicant)

(City/State)

(Zip)

219 1/2 Diamond Ave Balboa Is, Ca 92662

(Telephone)

(Fax number)

949-673-3019

949-673-3019

(E-Mail address)

219 Diamond Ave, Balboa Is, Lot 26, Block 10, Section 3

(Subject Property Address)

Assessor's Parcel Number (APN)

219 Diamond Ave
Balboa Island, Ca 92662

Balboa Is

1. Is this application being submitted by a person with a disability, that person's representative, or a developer or provider of housing for individuals with a disability?

Joe Bakman representative for
Virginia de Bakman

2. Does the applicant, or individual(s) on whose behalf the application is being made, have physical or mental impairments that substantially limit one or more of such person's major life activities? If so, please state the impairment(s) and provide documentation of such impairment(s). Enclosed paper!

3. From which specific Zoning Code provisions, policies or practices are you seeking an exception or modification?

Application Number _____

Enclosed paper 2

4. Please explain why the specific exception or modification requested is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence. Please provide documentation, if any, to support your explanation.

Enclosed paper 3

5. Please explain why the requested accommodation will affirmatively enhance the quality of life of the individual with a disability. Please provide documentation, if any, to support your explanation.

Enclosed paper 4

6. Please explain how the individual with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation? Please provide documentation, if any, to support your explanation.

Enclosed paper 5

7. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary to make your facility economically viable in light of the relevant market and market participants. Please provide documentation, if any, to support your explanation.

8. If the applicant is a developer or provider of housing for individuals with a disability, please explain why the requested accommodation is necessary for your facility to provide individuals with a disability an equal opportunity to live in a residential setting taking into consideration the existing supply of facilities of a similar nature and operation in the community. Please provide documentation, if any, to support your explanation.

Application Number _____

9. Please add any other information that may be helpful to the applicant to enable the City to determine whether the findings set forth in Chapter 20.98 can be made (Use additional pages if necessary.) Enclosed papers 6-7-8-9-10

Topographical map 219 Diamond Bulova St
Highway A
Health Report
Restraining order

①

②

Mrs. Richard L. Bakman does have a physical impairment. She suffered from a prolapsed uterus impairing muscle support to that area of her body. While a hysterectomy corrected some problems it did not correct the damaged bladder. The proximity of a bathroom is very beneficial especially in a social situation.

The strain to the body also resulted in chronic venous insufficiency - CVI which causes the legs to swell, making walking clumsy, balance clumsy and a slowed ambulating gait. Surgery was beneficial but not perfect. A walker is a useful tool and ^{her} soaking in a coal bathtub for ulcerative legs to not have a bathroom on the first floor is an extreme hardship.

Further Mrs. Bakman's goddaughter, Julie Giblin, is confined to a wheelchair. As a child, she was on a school outing, when an eucalyptus branch fell on her back rendering her a paraplegic. She visits the area with her husband and new family. The proposed bathroom, hall and storage area would be essential for ease of entertaining.

Finally, there is a family friend with multiple sclerosis which is a chronic degenerative disease of the central nervous system and brain. She has

locomotion problems which subside and flare up suddenly resulting in serious side effects and downturns. Such progressive destruction of the myelin that sheathes the nerves has placed her in and out of a wheelchair.

Doctor reports can be supplied for Mrs. Virginia A. Bakman if requested.

Susie Gilstrap (maiden name) may still be listed.

3

The owner is seeking an exception to the 2720 square footage allotment for this property. The applicant is requesting that the first floor breezeway be enclosed into the house adding an additional 216 square feet. However 40 square feet of this addition houses a stair closet with very limited, useable space. The applicant is seeking an exception to this square footage policy to allow for a reasonable accomodation addition i.e. bathroom, hall and storage.

(4)

The proposed exception to this residence is necessary to allow the applicant to install a large bathroom on the ground floor of the home. Which if allowed would provide the owner with the only bathroom on this floor. Further, because this first floor area is the main social, entertainment area of the home a large functioning bathroom for both the able and disabled is essential. As currently proposed the nearest bathroom is housed on the second floor.

To traverse this second floor bathroom is awkward and inconvenient for people with wheelchairs, walkers and other physical disabilities. Because of the second floor location access is not quick. With the addition of the proposed bathroom area to the first floor the disabled will be able to enjoy a more equal opportunity to use and enjoy the residence.

Further, this area indicated for the proposed bathroom is the most private and cost effective location. It is the most efficacious area to alleviate the problem. Hot and cold water access relatively easy sewer hook up and accessibility to roof for venting.

(5) The proposed bathroom area will affirmatively enhance the quality of life for all involved. By its very location, size and placement in the house, this bathroom will afford ease of use; nearness of social situation use, and no use of impeding stairs for gaining use. This will be the only bathroom in this house so situated. The nearness of a bathroom and ease of access with less restrictions eliminates some of the awkwardness of disabilities. Pressure hardship can be avoided especially in the middle of a dinner or cocktail party.

Further, the ease by which one enters the house directly from the garage into a wide back hall of the home avoids entry steps, prolonged contact with bad weather and a roundabout walkway through the kitchen.

By granting this requested accommodation the ease and quality of everyday life will be assured and enhanced for the disabled. One of Webster's inclusive definitions of house includes the following:

A home is "comfortable at ease, familiar and willingness to receive visitors."

⑥

Without granting this reasonable accommodation Mrs. Virginia A. Palmer will most definitely be denied an equal opportunity to enjoy the housing type of her choice. This is her home and she deserves to enjoy it with respect and dignity as do her guests. This is the way she interacts in the world and to seek less for her in her home is demeaning and discriminating. This addition is very minimal and yet the most cost effective placement in the home. This is the best solution to facilitate accessibility and useability for disabled people.

She, as well as other members of her family, entertain disabled people as well as living with their own personal disabilities. With the proposed changes and addition, entertaining and living with such people will enhance, not compromise their lifestyle. Being subject to the vagaries of a weakened body and the need for greater anthropomorphic considerations, such as a larger bathroom, hall and storage, are minimal accomplishments with optimum payoff for a more normal life.

The use of a bathroom with a separate tub and a separate shower make accessibility easier. With the aid of Bobuck and Hewi accessories, such

as) grab bars and shower seats,
normal becomes more reasonable.

Also the use of a wider hall affording
a wider turn area and an adjacent
lower storage facility makes transitioning
in the house very functional.

The aging of America is offering
new concepts to parochial thinking
solving what was once awkward
problems and situations for both
the designer, client and community.

9

Other pertinent information to help facilitate a positive conclusion for the applicant:

① By granting the additional square footage the owner hopes to alleviate the practical difficulties associated with the property and the strict application of the zoning code resulting in physical hardships that are inconsistent with the purpose and intent of the zoning code.

② The result of the requested exception is still compatible with the existing developments in the area as indicated by the adjacent neighbor on the south side of the applicant's property.

Picture A - Neighbor A

This home has been allowed full enclosure on the side next to the applicant's home - from the front 10 foot set back to the alley as indicated by the topographical map and enclosed picture.

Therefore the applicant's reasonable accommodation, first floor addition, will not limit the neighbor's ground-level light penetration, and air which is already determined and impervious to the applicant's proposal.

In fact the minimal 9'0" wide x 8'0" height proposed ground wall will afford greater privacy for the neighbor's apartment and disavow the sound cavity of the applicant's breezeway - a constant source of aggravation and complaint for the neighbor.

- ③ The granting of this property exception will not adversely affect the health or safety of persons residing or working in the neighborhood of the property and not be detrimental to the general welfare or injurious to the property or improvements to the neighborhood.

In fact the reality of the proposed addition will improve the applicant's property in relation with the neighbor to the north.

Picture B - Neighbor B

By enclosing the applicant's breezeway with a 5'6" wide x 8'0" height wall the neighbors on the north side can still maintain maximum light air, ventilation and storage in their breezeway.

This area is already established impervious of the applicant's proposal.

However, this wall will afford greater protection, safety and health benefits to the applicant for the following reasons:

① Lit matchbooks and cigarettes are constantly thrown into the property with the applicant's breezeway. the center of target practice from the neighbors and renters to the north

② Property is hosed down from the neighbor's second floor deck - water, dog feces, dog urine. A closed breezeway is less area to damage

- ③ Entrance to applicant's home through garage and not walkway to circumvent water.

Police watch commander Sgt Harvey report available
Health report

- ④ No breezeway cavity for the neighbors to hide in (adult and children alike). - unsewing.

- ⑤ Restraining order

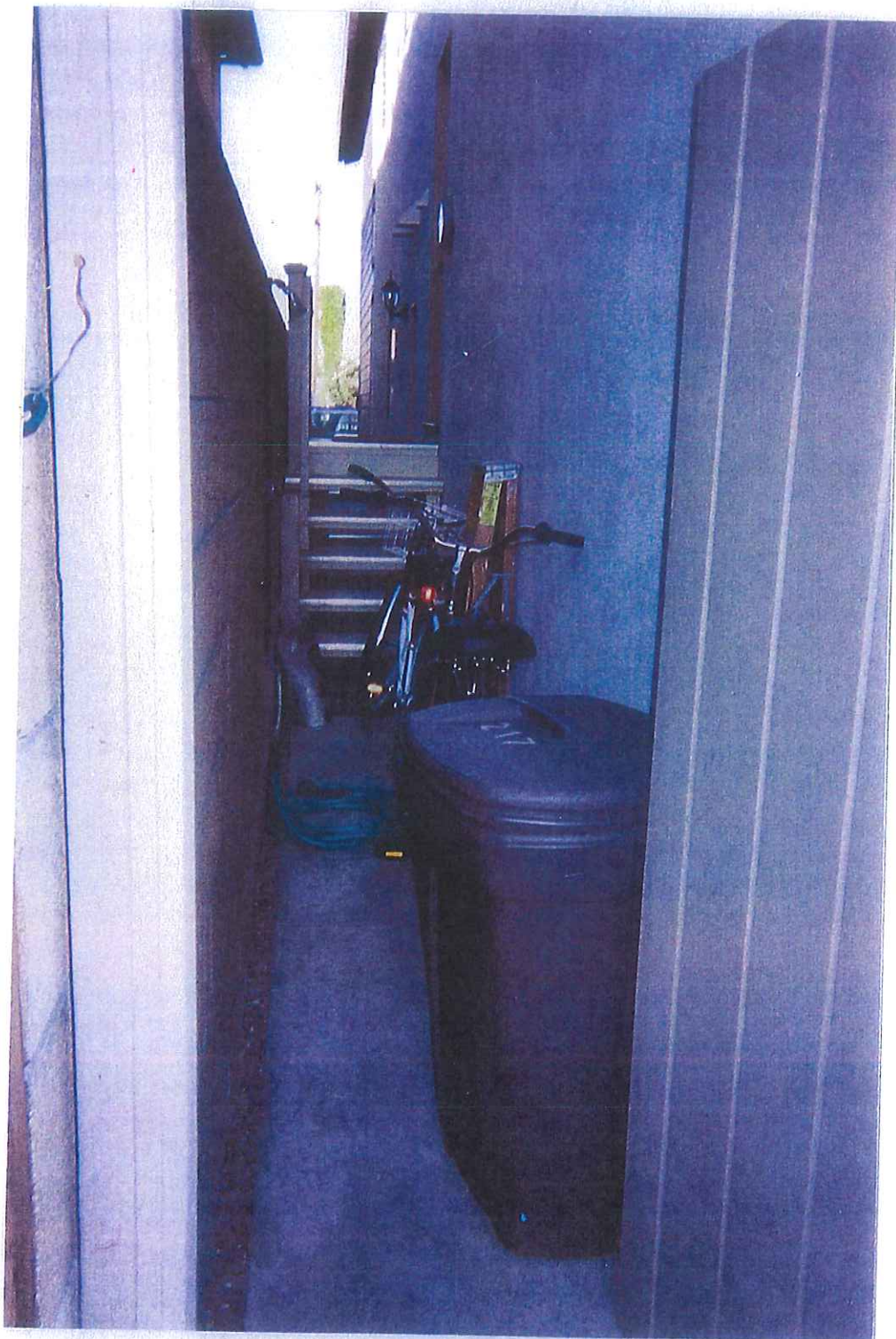
- ⑥ The volatile confrontational behavior is not good for anyone - young, old, able and disabled.

Therefore, by incorporating the breezeway into the house, the applicant hopes for greater control of the property; greater privacy; greater safety; less hardship; less confrontational situations; better security; and hopefully less use of the police.

④ It would appear that from the compilation of the enclosed information that no one's health, safety or damage to property will occur. In fact just the opposite. Everyone benefits without changing the essential nature of the City's zoning program.

⑦ Efficient retrofits for older adults and the disabled so that all might age in place is being denied us. I'm giving voice to such discrimination. I never thought in the United States I would have to grovel for a toilet for my mother from such degrading people.

⑧ In conclusion so much could be accomplished by incorporating roughly 200 sq ft into the house. Room for the disabled, room for the elderly and greater protection, privacy and safety in the back area of the home.



Picture A - Neighbor A



Picture B - Neighbor B



CITY OF NEWPORT BEACH

Findings Required for a Reasonable Accommodation

Planning Department
3300 Newport Boulevard
Newport Beach, California 92658-8913
(949) 644-3200

Pursuant to federal law and Chapter 20.98 of the Newport Beach Municipal Code, a request for a reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider for housing for individuals with a disability in order to provide a disabled individual with an equal opportunity to use and enjoy a dwelling. The term "reasonable accommodation" is used here as the term is used in the Federal Fair Housing Act Amendments (FHAA), the Americans With Disabilities Act (ADA), and case law implementing and interpreting those statutes. Reasonable accommodation requests shall be reviewed by a Hearing Officer and approved or conditionally approved so long as there is substantial evidence in the administrative record that establishes that all of the following findings for approval have been made:

FINDINGS

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the Fair Housing Laws.
2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
3. The requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in Fair Housing Laws and interpretive case law.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in Fair Housing Laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

Chapter 20.98

REASONABLE ACCOMMODATION

Sections:

- 20.98.010 Purpose.**
- 20.98.015 Review Authority.**
- 20.98.020 Application for Reasonable Accommodation.**
- 20.98.025 Decision.**
- 20.98.030 Expiration, Time Extension, Violation, Discontinuance and Revocation.**
- 20.98.035 Amendments.**

20.98.010 Purpose.

In accordance with Federal and State fair housing laws, it is the purpose of this chapter to provide reasonable accommodations in the City's zoning and land use regulations, policies, and practices when needed to provide an individual with a disability an equal opportunity to use and enjoy a dwelling. (Ord. 2008-5 § 19 (part), 2008)

20.98.015 Review Authority.

The Hearing Officer, as defined in Section 20.03.030, is designated to approve, conditionally approve, or deny all applications for a reasonable accommodation. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then an applicant may request that the Hearing Officer hear the request for a reasonable accommodation at the same time as the other discretionary permit or approval. If the applicant does not request a simultaneous hearing, then the request for a reasonable accommodation shall not be heard until after a final administrative decision has been made regarding the other discretionary permit or approval. (Ord. 2008-5 § 19 (part), 2008)

20.98.020 Application for Reasonable Accommodation.

A. Applicant. A request for reasonable accommodation may be made by any person with a disability, their representative, or a developer or provider of

housing for individuals with a disability. A reasonable accommodation may be approved only for the benefit of one or more individuals with a disability.

B. Application. An application for a reasonable accommodation from a zoning regulation, policy, or practice shall be made on a form provided by the Planning Department. No fee shall be required for a request for reasonable accommodation, but if the project requires another discretionary permit, then the prescribed fee shall be paid for all other discretionary permits.

C. Other Discretionary Permits. If the project for which the request for reasonable accommodation is made requires another discretionary permit or approval, then the applicant may file the request for reasonable accommodation together with the application for the other discretionary permit or approval. The processing procedures of the discretionary permit shall govern the joint processing of both the reasonable accommodation and the discretionary permit.

D. Required Submittals. In addition to materials required under other applicable provisions of this Code, an application for reasonable accommodation shall include the following:

1. Documentation that the applicant is: (a) an individual with a disability; (b) applying on behalf of one or more individuals with a disability; or (c) a developer or provider of housing for one or more individuals with a disability;
2. The specific exception or modification to the Zoning Code provision, policy, or practices requested by the applicant;
3. Documentation that the specific exception or modification requested by the applicant is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy the residence;
4. Any other information that the Planning Director reasonably concludes is necessary to determine whether the findings required by Section 20.98.025(B) can be made, so long as any request for information regarding the disability of the individuals benefited complies with fair housing law protections and the privacy rights of the individuals affected. (Ord. 2008-5 § 19 (part), 2008)

20.98.025 Decision.

A. **Hearing Officer Action.** The Hearing Officer shall issue a written determination to approve, conditionally approve, or deny a request for reasonable accommodation, and the modification or revocation thereof in compliance with subsection (B) of this section. The reasonable accommodation request shall be heard with, and subject to, the notice, review, approval, and appeal procedures prescribed for any other discretionary permit, provided that, notwithstanding Section 20.95.060, the standard of review on appeal shall not be de novo and the City Council shall determine whether the findings made by the Hearing Officer are supported by substantial evidence presented during the evidentiary hearing. The City Council, acting as the appellate body, may sustain, reverse or modify the decision of the Hearing Officer or remand the matter for further consideration, which remand shall include specific issues to be considered or a direction for a de novo hearing.

B. **Findings.** The written decision to approve, conditionally approve, or deny a request for reasonable accommodation shall be based on the following findings, all of which are required for approval:

1. The requested accommodation is requested by or on the behalf of one or more individuals with a disability protected under the fair housing laws.
2. The requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling.
3. The requested accommodation will not impose an undue financial or administrative burden on the City as "undue financial or administrative burden" is defined in fair housing laws and interpretive case law.
4. The requested accommodation will not result in a fundamental alteration in the nature of the City's zoning program, as "fundamental alteration" is defined in fair housing laws and interpretive case law.
5. The requested accommodation will not, under the specific facts of the case, result in a direct threat to the health or safety of other individuals or substantial physical damage to the property of others.

In making these findings, the decision maker may approve alternative reasonable accommodations

which provide an equivalent level of benefit to the applicant.

C. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation is necessary to provide one or more individuals with a disability an equal opportunity to use and enjoy a dwelling:

1. Whether the requested accommodation will affirmatively enhance the quality of life of one or more individuals with a disability;
2. Whether the individual or individuals with a disability will be denied an equal opportunity to enjoy the housing type of their choice absent the accommodation;
3. In the case of a residential care facility, whether the requested accommodation is necessary to make facilities of a similar nature or operation economically viable in light of the particularities of the relevant market and market participants;
4. In the case of a residential care facility, whether the existing supply of facilities of a similar nature and operation in the community is sufficient to provide individuals with a disability an equal opportunity to live in a residential setting.

D. The City may consider, but is not limited to, the following factors in determining whether the requested accommodation would require a fundamental alteration in the nature of the City's zoning program:

1. Whether the requested accommodation would fundamentally alter the character of the neighborhood;
2. Whether the accommodation would result in a substantial increase in traffic or insufficient parking;
3. Whether granting the requested accommodation would substantially undermine any express purpose of either the City's General Plan or an applicable specific plan;
4. In the case of a residential care facility, whether the requested accommodation would create an institutionalized environment due to the number of and distance between facilities that are similar in nature or operation.

E. **Coastal Zone Properties.** For housing located in the coastal zone, a request for reasonable accom-

modation under this section may be approved by the City if it is consistent with the requisite findings set forth in Section 20.98.025(B), with Chapter 3 of the California Coastal Act of 1976, and with the Interpretative Guidelines for Coastal Planning and Permits as established by the California Coastal Commission dated February 11, 1977, and any subsequent amendments, and the local coastal program.

F. Rules While Decision is Pending. While a request for reasonable accommodation is pending, all laws and regulations otherwise applicable to the property that is the subject of the request shall remain in full force and effect.

G. Effective Date. No reasonable accommodation shall become effective until the decision to grant such accommodation shall have become final by reason of the expiration of time to make an appeal. In the event an appeal is filed, the reasonable accommodation shall not become effective unless and until a decision is made by the City Council on such appeal, under the provisions of Chapter 20.95. (Ord. 2008-5 § 19 (part), 2008)

20.98.030 Expiration, Time Extension, Violation, Discontinuance and Revocation.

A. Expiration. Any reasonable accommodation approved in accordance with the terms of this chapter shall expire within twenty-four (24) months from the effective date of approval or at an alternative time specified as a condition of approval unless:

1. A building permit has been issued and construction has commenced;
2. A certificate of occupancy has been issued;
3. The use is established; or
4. A time extension has been granted.

In cases where a coastal permit is required, the time period shall not begin until the effective date of approval of the coastal permit.

B. Time Extension. The Hearing Officer may approve a time extension for a reasonable accommodation for good cause for a period or periods not to exceed three years. An application for a time extension shall be made in writing to the Planning Director

no less than thirty (30) days or more than ninety (90) days prior to the expiration date.

C. Notice. Notice of the Hearing Officer's decision on a time extension shall be provided as specified in Section 20.91.030(C). All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth in subsection (D) of this section.

D. Appeal of Determination. A time extension for a reasonable accommodation shall be final unless appealed to the City Council within fourteen (14) calendar days of the date of mailing of the determination. An appeal shall be made in writing and shall be noticed and heard pursuant to the procedures established in Chapter 20.95 of this Code, as modified by Section 20.98.025(A).

E. Violation of Terms. Any reasonable accommodation approved in accordance with the terms of this Code may be revoked if any of the conditions or terms of such reasonable accommodation are violated, or if any law or ordinance is violated in connection therewith.

F. Discontinuance. A reasonable accommodation shall lapse if the exercise of rights granted by it is discontinued for one hundred eighty (180) consecutive days. If the persons initially occupying a residence vacate, the reasonable accommodation shall remain in effect only if the Planning Director determines that: (1) the modification is physically integrated into the residential structure and cannot easily be removed or altered to comply with the Code, and (2) the accommodation is necessary to give another disabled individual an equal opportunity to enjoy the dwelling. The Planning Director may request the applicant or his or her successor in interest to the property to provide documentation that subsequent occupants are persons with disabilities. Failure to provide such documentation within ten days of the date of a request by the City shall constitute grounds for discontinuance by the City of a previously approved reasonable accommodation.

G. Revocation. Procedures for revocation shall be as prescribed by Chapter 20.96, Enforcement. (Ord. 2008-5 § 19 (part), 2008)



Newport Beach Police Department

Marsy's Rights and Resources

To provide victims with rights to justice and due process
in accordance with the Victims' Bill of Rights Act of 2008

Your Case
Number

Offense
Number

Telephone
Number

Local Resources and Support Groups

Your local Victim Witness Assistance Center can provide advocacy and specific information on local resources, the Victim Compensation Program, and support groups. To obtain information on the Victim Witness Assistance Center nearest you, contact: **Victims of Crime Resource Center**, 1-800-VICTIMS (1-800-842-8467).

California Statewide & National Resources

The following are some of the resources available to victims and their families. This is not an exhaustive list. The Attorney General offers these references for informational purposes only.

- California Attorney General's Victim Services Unit 1-877-433-9069 www.ag.ca.gov/victimservices
- California Department of Corrections and Rehabilitation, Office of Victim & Survivor Rights & Services 1-877-256-CVSS (6877) www.cdcr.ca.gov/victim_services
- Rape, Abuse, Incest National Network 1-800-524-4765 www.rainn.org
- California Partnership to End Domestic Violence 1-800-524-4765 www.cpedv.org
- Center for Missing & Exploited Children 1-800-THE-LOST (1-800-843-5678) www.missingkids.com
- National Center for Victims of Crime 1-800-FYI-CALL (1-800-394-2255) www.ncvc.org/national
- National Domestic Violence Hotline 1-800-799-SAFE (7233) www.ndhv.org

Victim Compensation Program

Help for victims" of:

- | | | | |
|--------------------------|---------------------|---------------------|------------------|
| • Assault | • Child Abuse | • Domestic Violence | • Drunk Driving |
| • Homicide | • Human Trafficking | • Robbery | • Sexual Assault |
| • Vehicular Manslaughter | | | |

What potentially can the Victim's Compensation Program help pay for?

- | | | | |
|----------------------------|-----------------|--------------------------|------------------|
| • Relocation | • Funeral Costs | • Crime Scene Cleanup | • Loss of Income |
| • Mental health counseling | | • Medical & Dental Bills | |

For more information, contact your Victim Witness Assistance Center, or

Victim Compensation & Government Claims Board 1-800-777-9229 www.victimcompensation.ca.gov

On November 4, 2008, the People of the State of California approved Proposition 9, the Victims' Bill of Rights Act of 2008. Marsy's Law. This measure amended the California Constitution to provide additional rights to victims. This card contains specific sections of the Victims' Bill of Rights and resources. Crime victims may obtain additional information by contacting the Victims of Crime Resource Center at 1-800-VICTIMS (1-800-842-8467).

A "victim" is defined under the California Constitution as: "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful representative of a crime victim who is deceased, a minor, or physically or psychologically incapacitated. The term 'victim' does not include a person in custody for an offense, the accused, or a person whom the court finds would not act in the best interests of a minor victim." (Cal Const., art. I, § 28(e))

Victims' Bill of Rights "Marsy's Rights"

California Constitution, Article I, Section 28(b)

In order to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to the following rights:

1. To be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process.
 2. To be reasonably protected from the defendant and persons acting on behalf of the defendant.
 3. To have the safety of the victim and the victim's family considered in fixing the amount of bail and release conditions for the defendant.
 4. To prevent the disclosure of confidential information or records to the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, which could be used to locate or harass the victim or the victim's family or which disclose confidential communications made in the course of medical or counseling treatment, or which are otherwise privileged or confidential by law.
 5. To refuse an interview, deposition, or discovery request by the defendant, the defendant's attorney, or any other person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interview to which the victim consents.
 6. To reasonable notice of and to reasonably confer with the prosecuting agency, upon request, regarding, the arrest of the defendant if known by the prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon request, to be notified of and informed before any pretrial disposition of the case.
 7. To reasonable notice of all public proceedings, including delinquency proceedings, upon request, at which the defendant and the prosecutor are entitled to be present and of all parole or other post-conviction release proceedings, and to be present at all such proceedings.
 8. To be heard, upon request, at any proceeding, including any delinquency proceeding, involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or any proceeding in which a right of the victim is at issue.
 9. To a speedy trial and a prompt and final conclusion of the case and any related post-judgment proceedings.
 10. To provide information to a probation department official conducting a pre-sentence investigation concerning the impact of the offense on the victim and the victim's family and any sentencing recommendations before the sentencing of the defendant.
 11. To receive, upon request, the pre-sentence report when available to the defendant, except for those portions made confidential by law.
 12. To be informed, upon request, of the conviction, sentence, place and time of incarceration, or other disposition of the defendant, the scheduled release date of the defendant, and the release of or the escape by the defendant from custody.
 13. To restitution.
 - A. It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.
 - B. Restitution shall be ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.
 - C. All monetary payments, monies, and property collected from any person who has been ordered to make restitution shall be first applied to pay the amounts ordered as restitution to the victim.
 14. To the prompt return of property when no longer needed as evidence.
 15. To be informed of all parole procedures, to participate in the parole process, to provide information to the parole authority to be considered before the parole of the offender, and to be notified, upon request, of the parole or other release of the offender.
 16. To have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.
 17. To be informed of the rights enumerated in paragraphs (1) through (16).
- A victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim, may enforce the above rights in any trial or appellate court with jurisdiction over the case as a matter of right. The court shall act promptly on such a request.

(Cal. Const., art. I, § 28(c)(1).)



County of Orange
Health Care Agency
Regulatory Health Services
Environmental Health

JULIETTE A. POULSON, R.N., M.H.
DIRECTOR
MIKE SPURGEON
DEPUTY AGENCY DIRECTOR
REGULATORY HEALTH SERVICES
RICHARD SANCHEZ, R.E.H.S. M.P.H.
DIRECTOR
ENVIRONMENTAL HEALTH

MAILING ADDRESS:
1241 EAST DYER ROAD, SUITE 120
SANTA ANA, CA 92705-5611
TELEPHONE (714) 433-6000
FAX (714) 754-1768
E-Mail: ehc@ehca.com

04/02/2007

JANE BAKMAN
219 1/2 DIAMOND AVE
BALBOA ISLAND CA 92662

Dear JANE BAKMAN,

SUBJECT: CO0032132

Thank you for your recent notification to us about a potential Uniform Housing Code violation within Orange County. The violation was described as:

ANIMAL WASTE BEING WASHED INTO THE DOWNSTAIRS WALKWAY AREA

located at

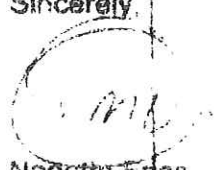
221 1/2 DIAMOND AVE BALBOA ISLAND
BALBOA ISLAND, CA 92662

We have sent a letter to the Owner, Manager, or Resident that any such condition, if it exists as described, would be a violation of the Uniform Housing Code. They were also notified that it is the policy of this Agency not to disclose the name of the complainant.

If the condition still exists after 30 days from the date of this letter, please call our office again and indicate to our Customer Service staff that the problem has not been corrected. Please refer to complaint number: CO0032132. We will forward your second complaint to a Supervisor for review and appropriate action that may include an onsite investigation of the premises.

Your help in maintaining a healthful environment is appreciated. If we can be of further assistance, please call between 8:00 a.m. and 5:00 p.m., Monday through Friday, at (714) 433-6000.

Sincerely,


Nanette Frías
Customer Service Specialist
Environmental Health Division

F042-09.1340 (5005-1)

Newport Beach Police Department
870 Santa Barbara Dr., Newport Beach, CA 92660

Case Number: WATCH COMMANDER
Officer: SGT. HARVEY
Phone #: 949-644-3730

Front Desk Hours: 8:00 a.m. to 6:00 p.m.
Front Desk Phone: 949-644-3681

Property Release Hours:
Monday - Thursday Between 1:00 p.m. - 3:30 p.m.
Property Phone: 644-3659

Other Phone Numbers:
Dispatch: 644-3717 Records: 644-3682
Detectives: 644-3790 Jail: 644-3672
Traffic/Patrol 644-3742 Crime Prevention 644-3699
Crime Scene Investigator 644-3739

Rev. 03/06

October - 2011

I thought "fair housing" was/is just that - fair to the person who owns and resides in the housing. This isn't just a variance, but a variance for special needs. This variance involves people as well as property. Ergo, one needs to address not only the unique circumstances of the lot, but also the people who occupy that "lot, that space, that topography" for their unique circumstances. To form a judgment on one without the other is impossible. The City of Newport Beach is. Mr. Jay Garcia does not feel this property deserves Fair Housing consideration and has opted to turn us down. However, the owner requests a Fair ^{Housing} Hearing.

- ① Several lots and/or houses located on the 200 block of Diamond exceed the 1.5 zoning requirement. These houses exceed the 2750 sq ft requirement and not for medical reasons. In fact the house next to us on the south side extended onto our property until we clarified the situation. It cost us \$8-9000

(1)

to remove them. And still we were penalized by the planning department and the City of Newport Beach.

Mr. Garcia has acknowledged that there are homes already exceeding the existing zoning requirements on the block and for that matter the island. Therefore, granting fair housing to our property would actually be giving us equal consideration enjoyed by other properties in the immediate area. We would not be inconsistent with these properties even though our personal needs are greater for the enjoyment of the property. In fact we would still be underbuilt compared to some of the housing.

(2)

Mr. Garcia has expressed negativity for our original expansion of 114 sq. ft. This property is a home not a rental or transient property. The front expansion of the home has been approved by the Coastal Commission even though it was not necessary to send us there. The report is as follows:

"Extend the first floor living area

by 70 $\frac{1}{2}$ to accomodate late brother's piano. It has great sentimental value as he taught at Juilliard School of Music New York. It also has special meaning for a parent who helped foster that kind of creativity. Hereagain, this is a home where most homes are allowed to house not only people but also functional memorabilia as well.

I believe Mr. Garcia finds this application of footage to be a waste of space. It has been recommended that a bathroom should be built in our living room which I find offensive. We were also told that we had no property rights.

Perhaps that is why we are having a difficult time being allowed to modernize our property whether for a relocation of a bathroom or an expansion of a bedroom or living room. All asked for under square footage allotment.

(3) The 114 $\frac{1}{2}$ extension into the west side of the front yard — first and second floors is nominal. The 44

building will stop at 11'0" of property line even though the front yard setback is 10'0". The proposed bay window does not extend into the maximum area allowed. Most of the current houses are built up to the 10'0" setback and some beyond that requirement plus additional bay window footage.

(4) Further on this particular building all windows and most doors from (the north side - first floor) and several windows (north side - second floor) have been removed. This repair became a necessity to protect the property from further vandalism by neighbors/owners/renters facing north side of property - 221 Diamond.

To compensate for this loss, the building needs the proposed front bay window and the proposed second floor front balcony for additional ventilation and natural light. As Garcia doesn't seem to realize there are necessary building requirements for a minimum of air and light transition allowed in a room.

By extending the front face of

(2)

the structure closer to the street and the street light there is greater public visibility affording more public protection. We, like everyone else, have a right to live on this property with greater safety, privacy and enjoyment. Confrontational aberrant social behavior is a difficult reality to be forced to coexist with. Therefore, the allowed 114 \square (70 \square first floor living area and 44 \square second floor bedroom and bathroom area) to improve the negative aspects of the lot are necessary.

"Please note: There is a restraining order in place against these neighbors. Further, the police recommend the use of security cameras front and back. The reality of the situation is that conditions are going to get a lot worse before things get better."

Mr. Garcia doesn't seem to realize that acquiring a restraining order is serious business not taken lightly by the courts. The abusive behavior that has continued repeatedly over the years does not bode well for residential property expensive or not. Such behavior does not

(6)

code well for city management either. We are trying to stop the problem quietly and in an orderly fashion. One would assume that the city would help but such is not the case.

To be assaulted on your own property puts a neighborhood and corresponding areas in jeopardy. To have these people hiding in your breezeway for whatever reason and accessing your property for whatever reason is not healthy for the value of the community. When the verbal abuse is so obvious that the neighbors come to you and advise you to seek protection.

(5) By obtaining fan housing the 188 ft of the breezeway could and should be incorporated into the house. It will secure the entire perimeter of the building. It will help alleviate security problems that are not of our making.

By positioning the fan housing bathroom/storage in the rear of the house it affords the most privacy. The new bathroom will be positioned below an existing bathroom for greater ease.

(7)

of installation; access to power and a more cost effective solution. Mr. Garcia is critical of the bathroom layout and yet it is accommodating for a woman with congestive heart failure. It is far better that this woman has a bathroom downstairs than none at all. And why is the city so critical of the reality that we want an area that is private? How is that criteria not acceptable?

(6)

Since it is on the ground floor, this bathroom will have a bathtub which is important for her illness. By utilizing the whole 188 \pm there is more room for a woman with a walker cane and oxygen tank. At times people ^{who} are ill their gait becomes less fluid but more encumbered - anthropomorphic constrictions. They need more room. And to not allow this area to be used as an improved bathroom is jeopardizing her health and safety. This addition gives her greater freedom to age in place.

(7)

The first floor, where this bath/storage area is to be added, also houses the 48

kitchen, living room, dining room and is thus the social hub of the house. Without it she would be severely limited to social enjoyment.

(8) What is wrong with requesting minimal additional footage for a bathroom / storage so that an ill person can enjoy his substantial property rights? Her unique medical circumstances form unique conditions for this property without endangering the existing zoning requirements. This addition affords the homeowner a better safer more enjoyable life and use of this property. I don't think the City of Newport Beach and Mr. Garcia have the right to discriminate against ill people and to limit the quality of life for 188 #1.

(9) Finally, it would help to have direct access to the garage from the house. It is a safer and more convenient route to one's car especially in bad weather. Also, I would not have been assaulted on this property if I could have had direct access to the house from the garage. I own lots 480 #1 & covered carport which

(9)

is used to park two cars it does not seem too ~~charge~~ that one might have an additional 188 ~~if~~ for fair housing and human beings.

(10)

My family does not want my mother's medical records being made public. And I do not approve of Mr Garcia denigrating the doctor's orders. This doctor knows her needs far better than Mr Garcia. To criticize his comments is counter productive. Patient confidentiality is of the utmost necessity. A toilet is a toilet especially a low flow energy conservative Toto toilet. When you own a two million dollar piece of property, it would seem one shouldn't have to grovel for a toilet and be insulted along the way.

(11)

And she will not be attending the island meeting to be discussed and treated like a freak in a side show. Her privacy and dignity is my concern. I feel that wanting those improvements is not superficial despite the City of Newport Beach expressing just that sentiment. Being ill is difficult

enough without having to violate a person's pride. I would think that the City of Newport Beach would not want to discriminate against sick people or promote hazardous neighborhood violence.

Strange isn't it how the city is trying to present some improvements, ~~opting~~ instead to push homeowners off their property and promote rentals. That form of a transient community devalues an area. I'm surprised the City of Newport Beach promotes such an uncooperative policy for community development.

* I do not want Mr Garcia on this property. We have had enough.

Revised

RECEIVED BY
COMMUNITY
MAR 15 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

RECEIVED BY
COMMUNITY
JAN 9 2012

DEVELOPMENT
CITY OF NEWPORT BEACH

AMENDED PLANNING PERMIT APPLICATION FOR VARIANCE
219 DIAMOND AVENUE
BALBOA ISLAND, CALIFORNIA 92662-1115

This application is submitted in order to obtain a waiver or modification to the Zoning Code of the City of Newport Beach, California. The owners of 219 Diamond Avenue (hereinafter the "Property") seek to add 285 square feet to the existing structure (hereinafter the "Structure") on the Property (hereinafter the "Project"), which may cause the existing structure to exceed the floor area limitations of the R-1.5 Zoning District.

The Property consists of a typical, interior lot with 30 feet of frontage, extending to a depth of 85 feet, with a rear alley for garage access. The Property has a gross area of approximately 2,550 square feet.

The Structure is a two-story, two-unit, residential building constructed in 1961. The interior contains (5) bedrooms and (3) bathrooms. The front owner's unit is two stories, and contains (4) bedrooms and (2) bathrooms. The rear unit is an apartment over the garage, and consists of (1) bedroom and (1) bathroom. The building contains an estimated 751 square feet on the first floor, and 1,412 square feet on the second floor, with a total building area of 2,163 square feet. The garage, at the rear of the unit, contains an estimated 496 square feet.

The owners/occupants of the units are Ms. Jane Bakman, and her mother, Mrs. Virginia Bakman (Mrs. Bakman). Mrs. Bakman is elderly, and suffers from various medical conditions, all qualifying disabilities under the Fair Housing Act Title VIII of the Civil Rights Act of 1968, including congestive heart failure. This variance is required in order to allow Mrs. Bakman an equal opportunity to use and enjoy the home that she has owned since 1970.

The project provides for the following improvements:

1. An open breezeway will be enclosed, which will allow for additional square footage on the ground level. This additional square footage will be used to add a bathroom, which will be accessible for Mrs. Bakman using a cane, walker or wheelchair, and will eliminate the necessity of navigating stairs, which requires assistance.
2. The front of the house will be extended nominally so that the currently available useable floor space will not be diminished. This will allow the ground floor to continue to be used as the primary place of occupancy for Mrs. Bakman during the day. This will also allow for the repair of the front of the Structure, which is currently in a deteriorated state.

The unique circumstances applicable to the Property are not generally applicable to other properties in the vicinity under the identical zoning classification.

The Structure on the Property was constructed in 1961, as a two family unit. When built, the Structure was designed to meet the needs of the presumed average occupant. The Structure and Property were not designed at that time to accommodate the unique needs of individuals with disabilities. As currently built, the shape and size of the Property and the Structure do not

allow for freedom of movement for an individual requiring the assistance of a walker, or an individual that is not ambulatory and requires wheelchair assistance.

The purpose when constructing a residential structure is to allow the occupants of that structure the reasonable opportunity to use and enjoy the dwelling. The occupants of similar dwellings in the vicinity that do not suffer from a disability, and do not require the assistance of a walker or wheelchair, are afforded the ability to use and enjoy their dwellings, because the shape and size of their property, and their dwellings, accommodate their needs. As currently constructed, Mrs. Bakman is not able to use and enjoy the Structure because it does not allow her freedom of movement within the structure, does not allow her reasonable access to a bathroom, and does not provide space where Mrs. Bakman can be in the company of others.

As noted in the letter of Dr. Kanwar T. Mahal, M.D., Mrs. Bakman suffers from several debilitating medical conditions, and requires a manageable living environment that accommodates her disabilities. As currently constructed, the Structure will not allow Mrs. Bakman to continue to reside in her home, as she has done since 1970. The shape and size of the property does not allow for the necessary improvements to accommodate these needs without the grant of a variance.

Strict compliance with the Zoning Code requirements will deprive the Property the privileges enjoyed by other properties in the vicinity under the identical zoning classification by denying the occupants their rights to reasonable use and enjoyment of the property.

The Zoning Code, as it currently stands, may not allow for the minimal addition of square footage that is sought. Without this addition, Mrs. Bakman is unable to enjoy reasonable use of the property, and is unlikely to be able to continue to live on the Property.

Other similarly zoned properties in the vicinity have been granted variances and exceed the square footage limitations of the Zoning Code. Although the reasons for the grant of the previous variances is unknown, it is important to understand that variances have been granted, and there are few, if any, reasons more compelling than allowing a disabled, elderly woman an opportunity to continue to live in her home. The square footage to be added in this instance is nominal and strict compliance with the Zoning Code substantially impinges on the property rights of the residents because it is the equivalent of evicting an individual from their own home. This Variance in no way affects anyone outside of those on the Property, and granting the variance has no negative effect on the City or its residents.

Granting a Variance is necessary for the preservation and enjoyment of substantial property rights of the residents.

Granting a Variance for the improvements to the Structure is the only way to preserve Mrs. Bakman's ability to continue to live on the Property. The remodeling and additions, while

certainly adding to the use and enjoyment of all residents, is critical to allow Mrs. Bakman to remain in the home. The improvements to be done on the property will create a more spacious ground floor bathroom, which will allow easier access for either a wheelchair or a walker, and which eliminates the need to navigate stairs. The inside remodeling allows for a dining area that is accessible for either a wheelchair or a walker, and allows for the use and enjoyment of the space by all occupants. In its entirety, the Project creates a home which can continue to address the needs of its residents, without impacting the use and enjoyment of others.

Granting the Variance ensures that the rights of the occupants are protected and is not a grant of a special privilege.

Granting Mrs. Bakman the ability to continue to live in her home isn't a privilege, it's a right. Every resident and property owner in the vicinity of the Property has a right to use and enjoy their property. While these rights can't infringe upon the rights of others to do the same, these rights also shouldn't be curtailed so that a mathematical formula can be satisfied.

Property rights are fundamental. While reasonable limitations can be imposed to protect the interests of the community at large, if the limitations do not logically serve that purpose, enforcing the limitations is a violation of individual property rights. In this instance, the remodeling and nominal addition have no effect on the City or the surrounding residents. That being the case, denying the Variance denies the fundamental rights of the residents of the Property by denying them the use and enjoy of their property.

The grant of a variance does not grant a special privilege not afforded to others in the vicinity. To the contrary, granting a variance ensures that the rights afforded to others in the vicinity are afforded to the residents of the Property.

Granting the Variance will have no negative impacts on the City or its residents and will not negatively affect the general welfare of persons living or working in the neighborhood.

The Project will have no impact on the City, Balboa Island or the neighbors of the Property. The Project creates such a nominal addition, that it doesn't have any impact on the Property's surroundings. Any impact that the Project would have would be due to the actual process of construction, which is not a basis to deny the variance. The Structure, after improvements, will have no greater effect on its surroundings than it does currently, and it will have no greater effect on its surroundings than any other building in the vicinity.

Granting the Variance meets the intent and purpose of the Zoning Code and is a benefit to the surrounding area and the owner/occupants.

According to the United States Census Bureau 10% of adults aged 18 to 64 have disabilities; however, 38% of adults aged 65 and older have disabilities. In the United States, 11

million people aged 6 and over need assistance with everyday activities, including such tasks as getting around inside the home or taking a bath or shower, and 3.3 million people use a wheelchair, with another 10 million using a walking aid, such as a cane, crutches or walker.

The stated purpose of the Newport Beach Zoning Code is "to promote and protect the public health, safety, peace, comfort and general welfare, and to protect the character and social and economic vitality of all districts within the City, and to assure the orderly and beneficial development of such areas." The City cannot achieve this goal by disregarding the realities of the existing population, and the reality is that the elderly and individuals with disabilities may occasionally require the City to grant exceptions. While the Code draws a bright line, that line is in fact blurred when the needs of the individual can be met without affecting the rights of others. The Project creates a minimal addition to the existing structure, less than 5%, and does not expand the footprint of the Structure. There is no effect on the neighbors, and the neighborhood as a whole is benefited by a population diverse in age and ability. Granting the Variance creates immeasurable benefits without having any negative impacts, and allows for the realities that exist in the City's population.

Given the property rights of Mrs. Bakman, the minimal additional square footage, the needs of Mrs. Bakman, and the absence of impact on the neighborhood, we respectfully request that the City grant the Variance and allow the Project to be completed as currently designed.

SUBMITTED BY

[Signature] AGENT FOR OWNER
BARRY WALKER

RECEIVED BY
COMMUNITY

MAR 15 2013

DEVELOPMENT
CITY OF NEWPORT BEACH

RECEIVED BY
COMMUNITY
JAN 9 2012
DEVELOPMENT
CITY OF NEWPORT BEACH

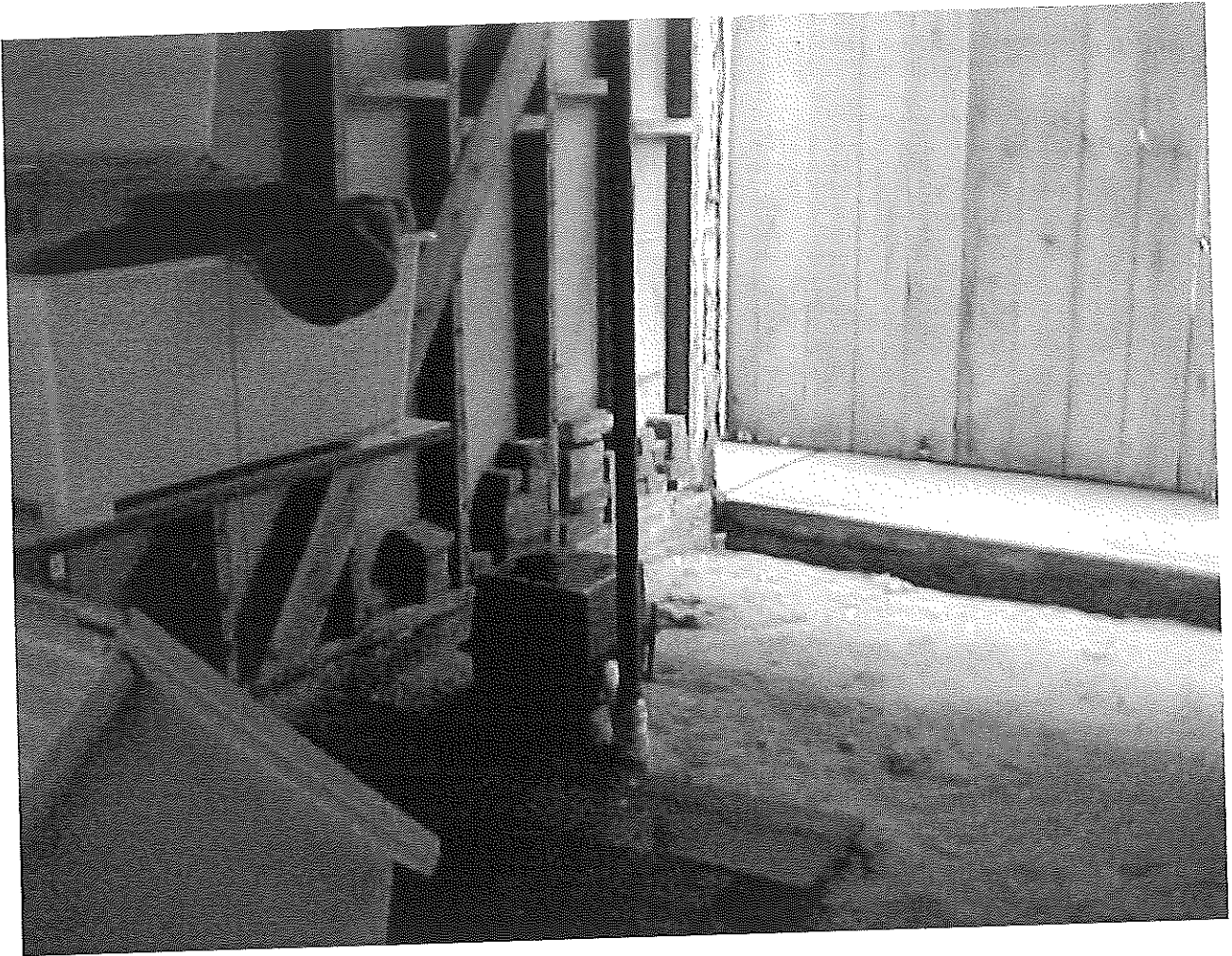
Attachment No. 3

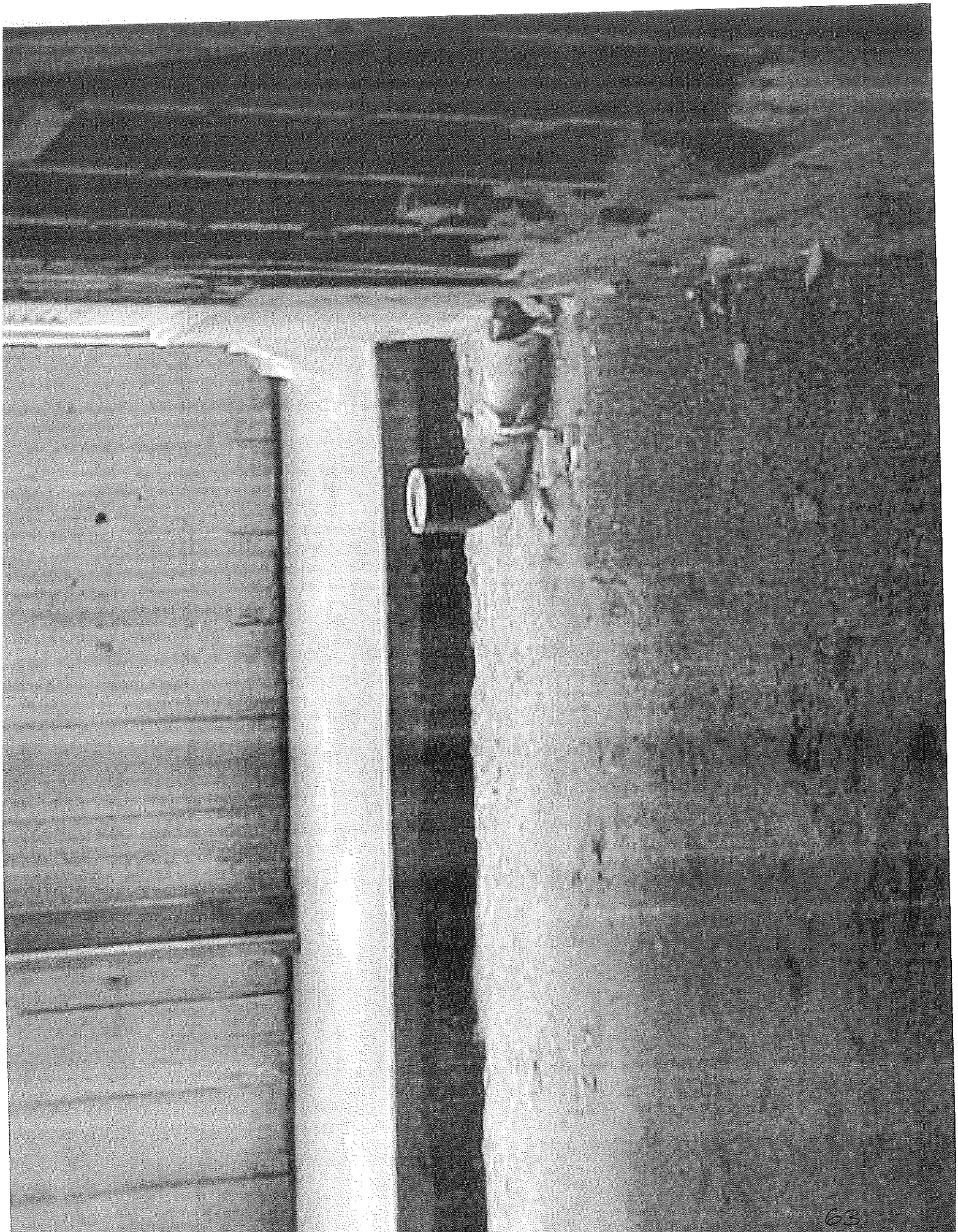
Physician's letter (CONFIDENTIAL,
available only to the Hearing Officer)

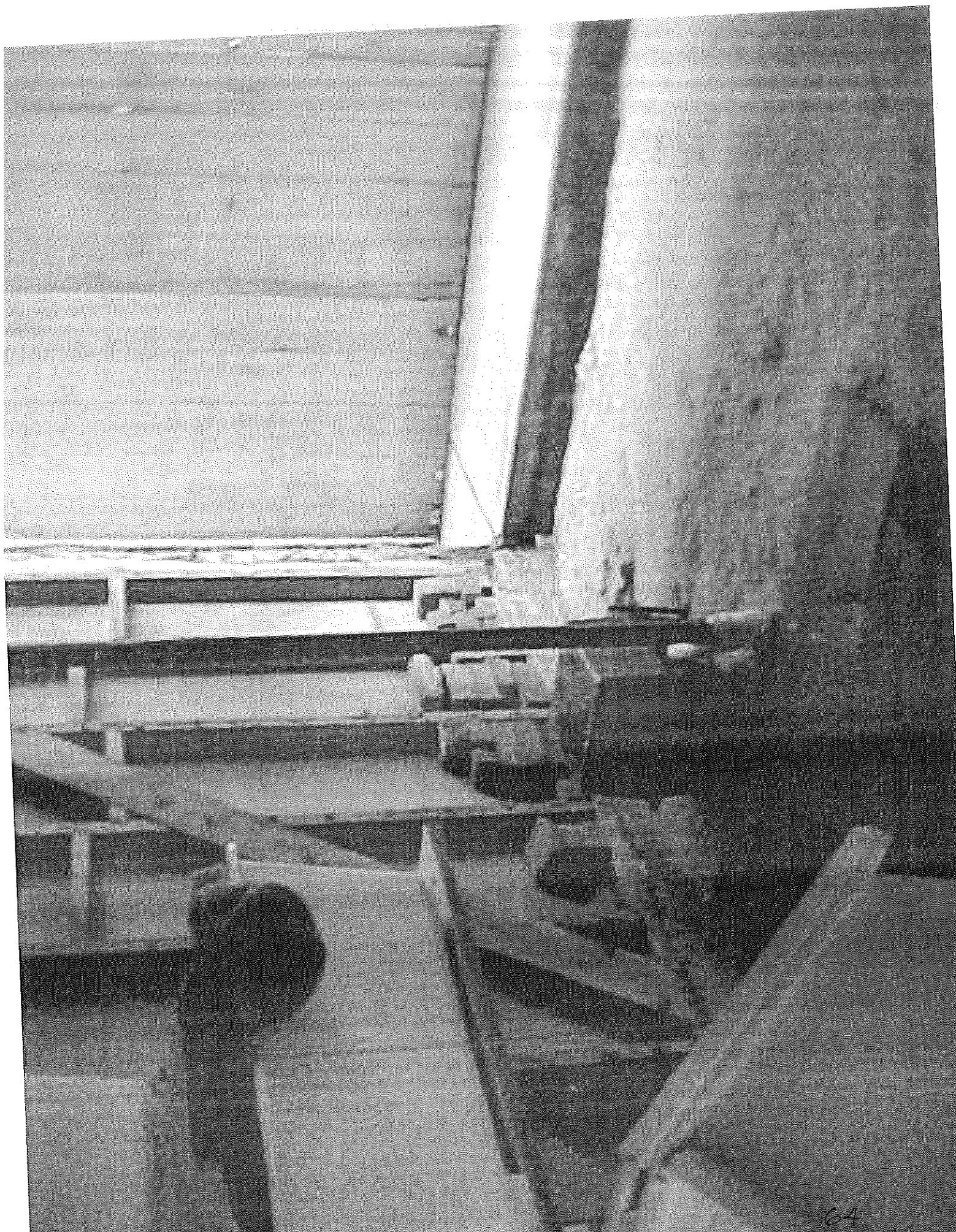
Attachment No. 4

Site Photographs









Attachment No. 5

Revised and Original Project Plans

February 11, 2013

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA. 92658

Attn: Jay Garcia



Re: Square Footage for 219 Diamond Ave. - RA2011-002 (PA2011-118)

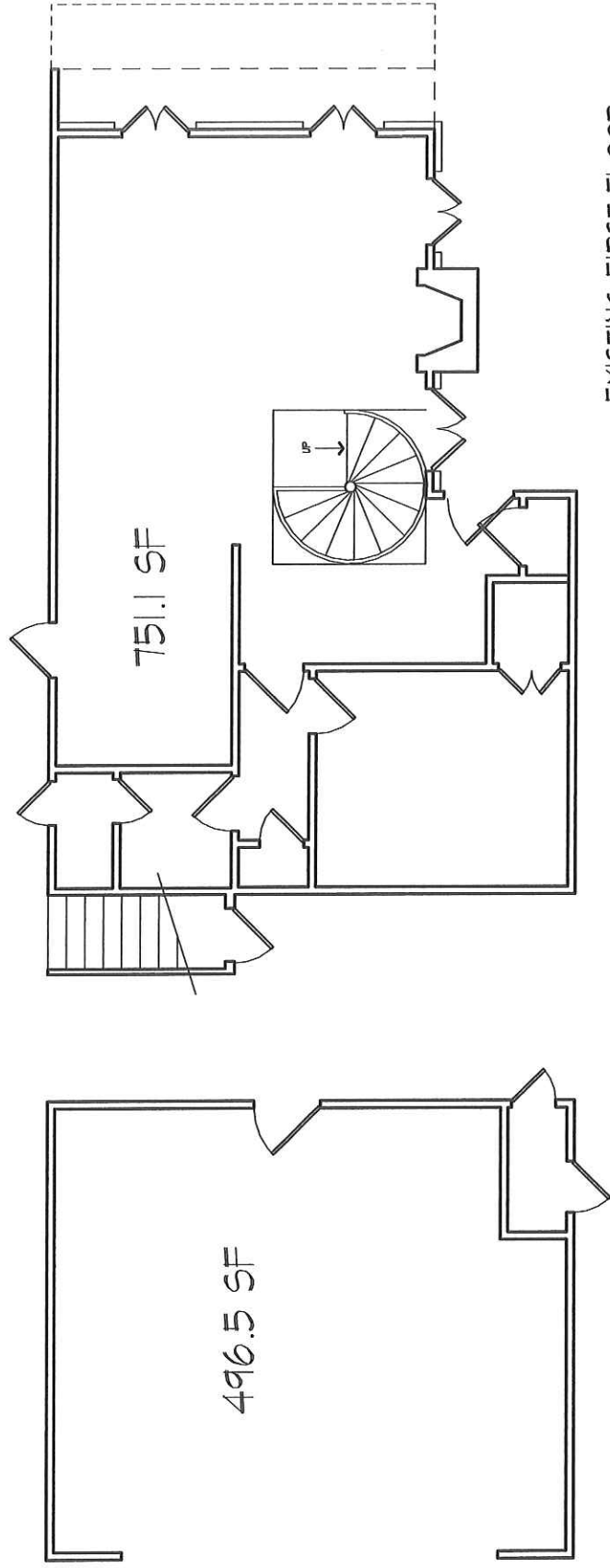
As a currently licensed architect in the state of California, I have measured the above referenced property to determine the existing square footage and calculated the proposed square footage for the applicant, Jane Bakman for use in her application for a variance based on reasonable accommodation to add more square footage than is currently allowed by the Newport Beach Zoning Code.

Attached are graphics for both existing and proposed floor plans with the corresponding square footages noted.

Thank you

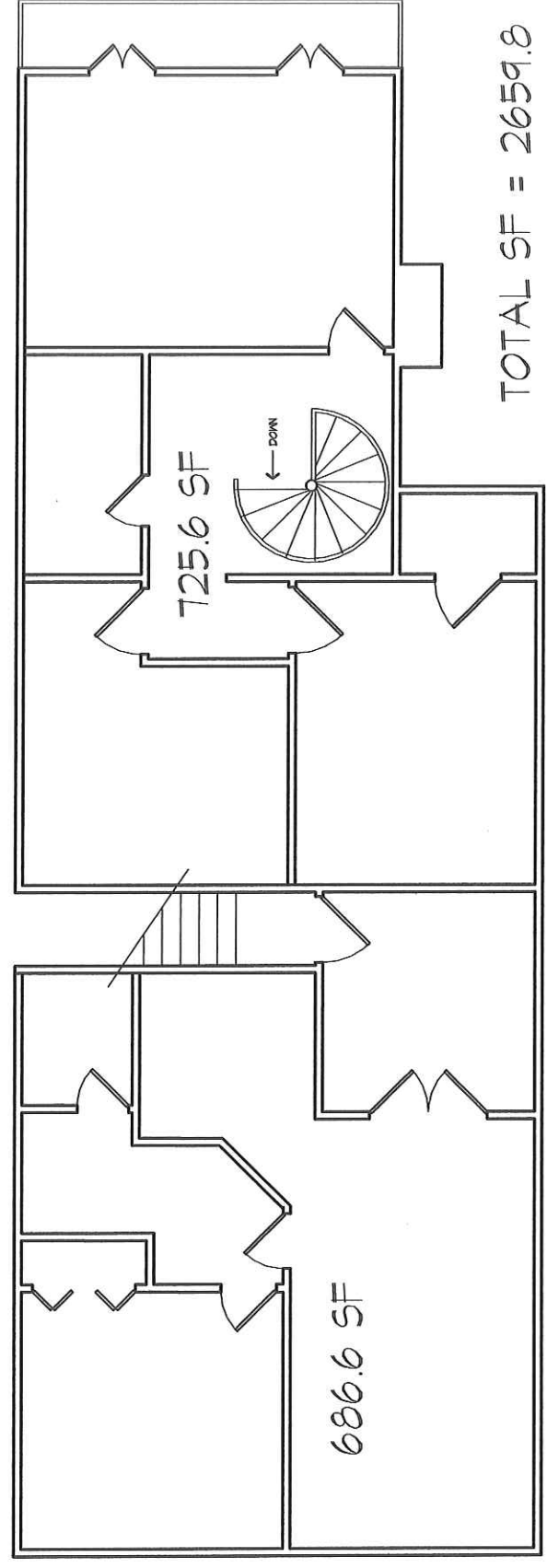
A handwritten signature in cursive script, appearing to read "Barry Walker".

BARRY WALKER P.O. BOX 11658 NEWPORT BEACH, CALIFORNIA 92658-1658
(C) 949.246.4085 (E) bwarch.biz@gmail.com



EXISTING FIRST FLOOR

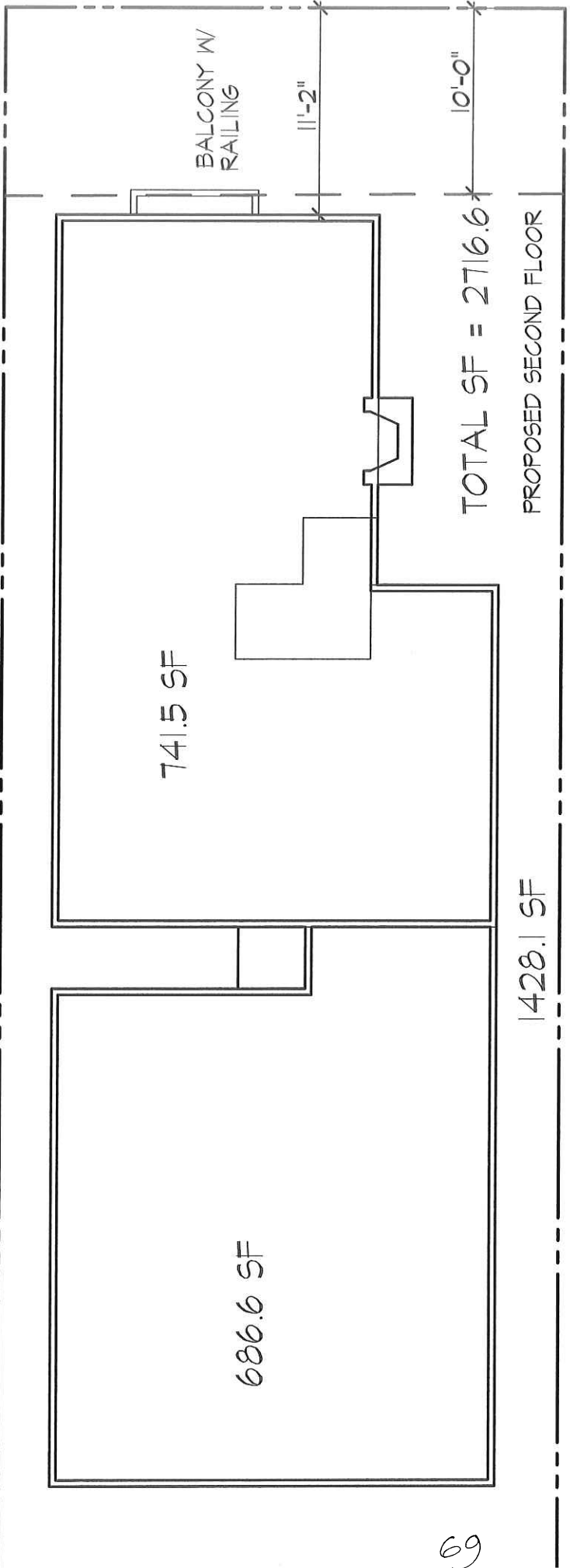
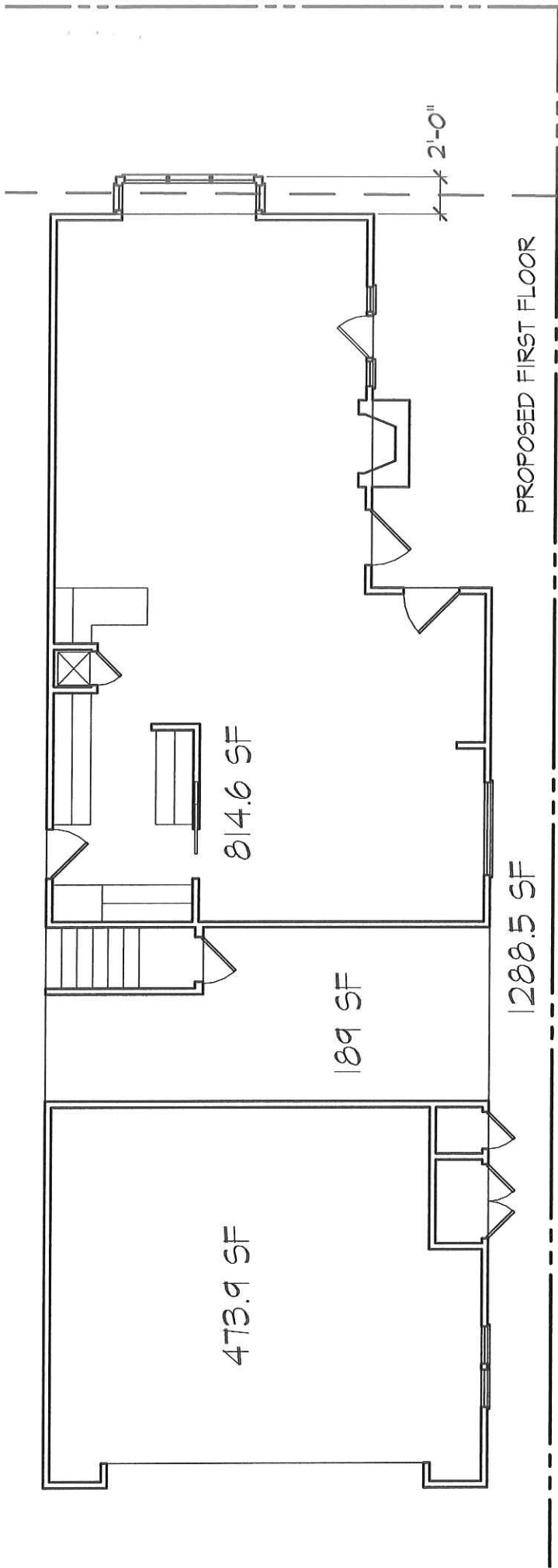
1247.6 SF

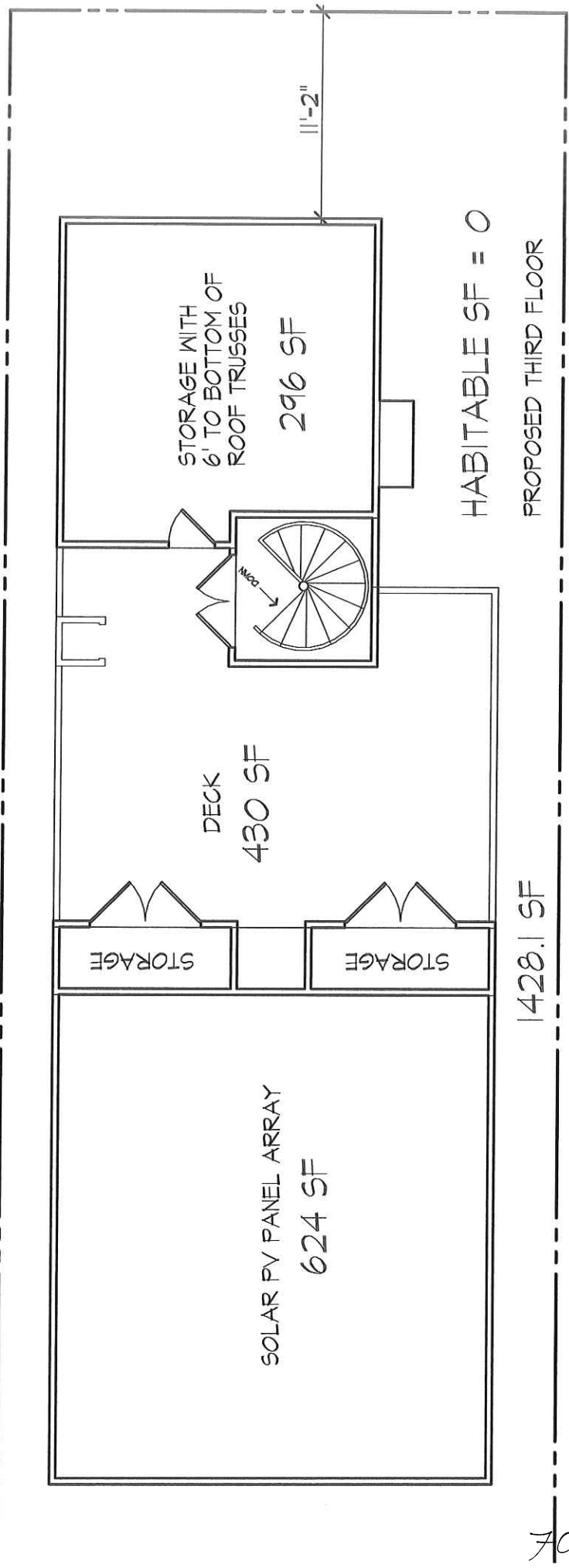


TOTAL SF = 2659.8

EXISTING SECOND FLOOR

1412.2 SF





428.1 SF

TOPOGRAPHIC SURVEY MAP

LEGEND:

- RL RIDGE LINE
- FF FINISHED FLOOR
- FS FINISHED SURFACE
- GF GARAGE FLOOR
- FL FLOW LINE
- BTC BACK TOP CURB
- GM GAS METER
- WM WATER METER
- SCO SEWER CLEAN OUT
- TW TOP OF WALL
- EG EXISTING GRADE
- G GATE
- EA EDGE OF ALLEY
- WL WOOD LANDING
- BW BACK OF WALK
- S STEP
- OH OVERHEAD
- CONC CONCRETE
- SL STREET LIGHT
- EB ELECTRIC BOX
- () RECORD DATA
- FD. MONUMENT AS NOTED
- SET L/T LS4599
- SET L/T LS4599 ON 2.00' O/S



Douglas O. Foster

DOUGLAS O. FOSTER P.L.S. 4599

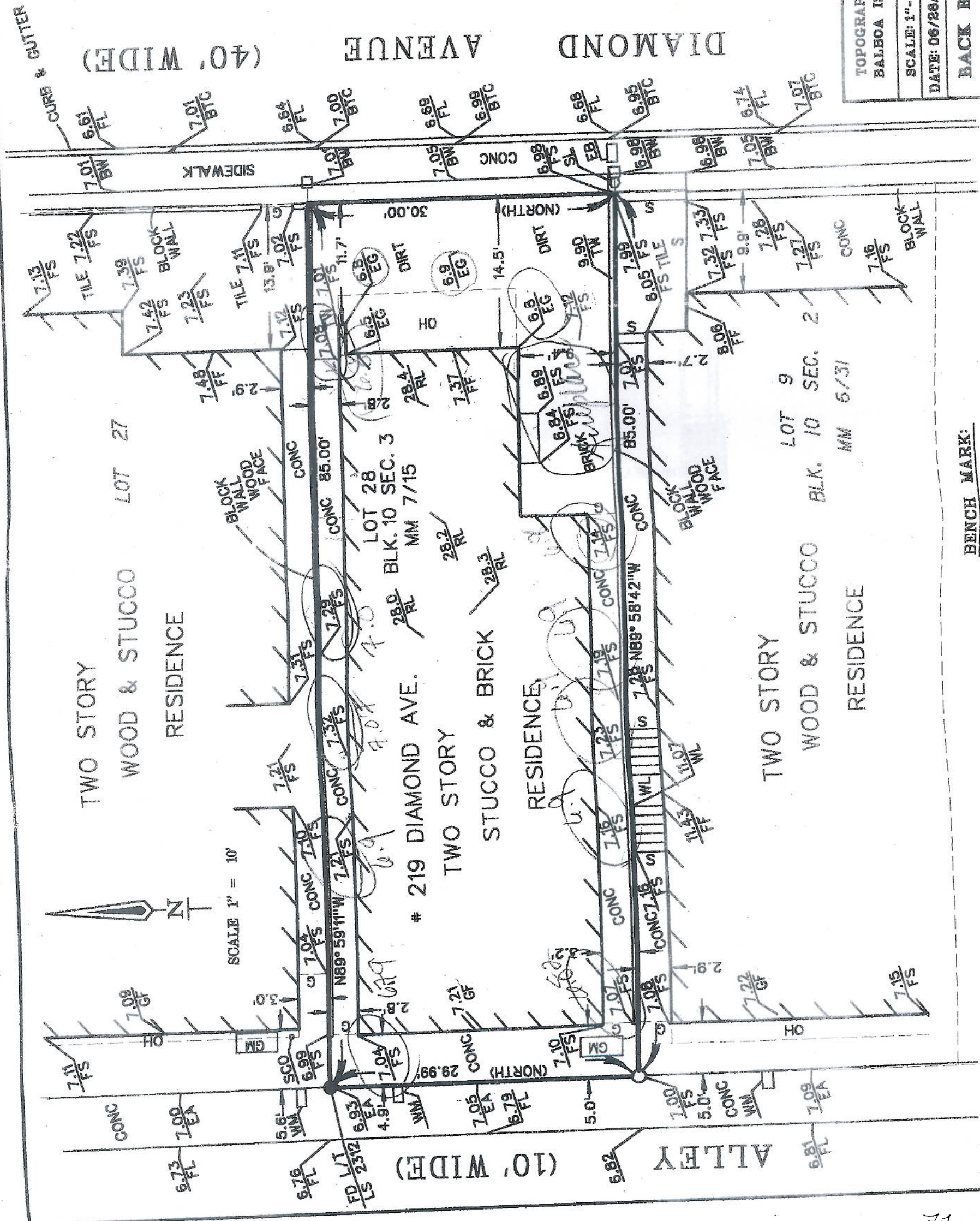
TOPOGRAPHIC SURVEY OF LOT 28, BLOCK 10, SECTION 3, MAP OF
BALBOA ISLAND PER M.M. 7/15 RECORDS OF ORANGE COUNTY, CA.

SCALE: 1"=10'	ARCHITECT:	DRAWN BY: M.S.
DATE: 06/28/2009		REVISED:

BACK BAY SURVEYING & MAPPING

NEWPORT BEACH, CA 92660

2835 TUSTIN AVENUE



BENCH MARK:

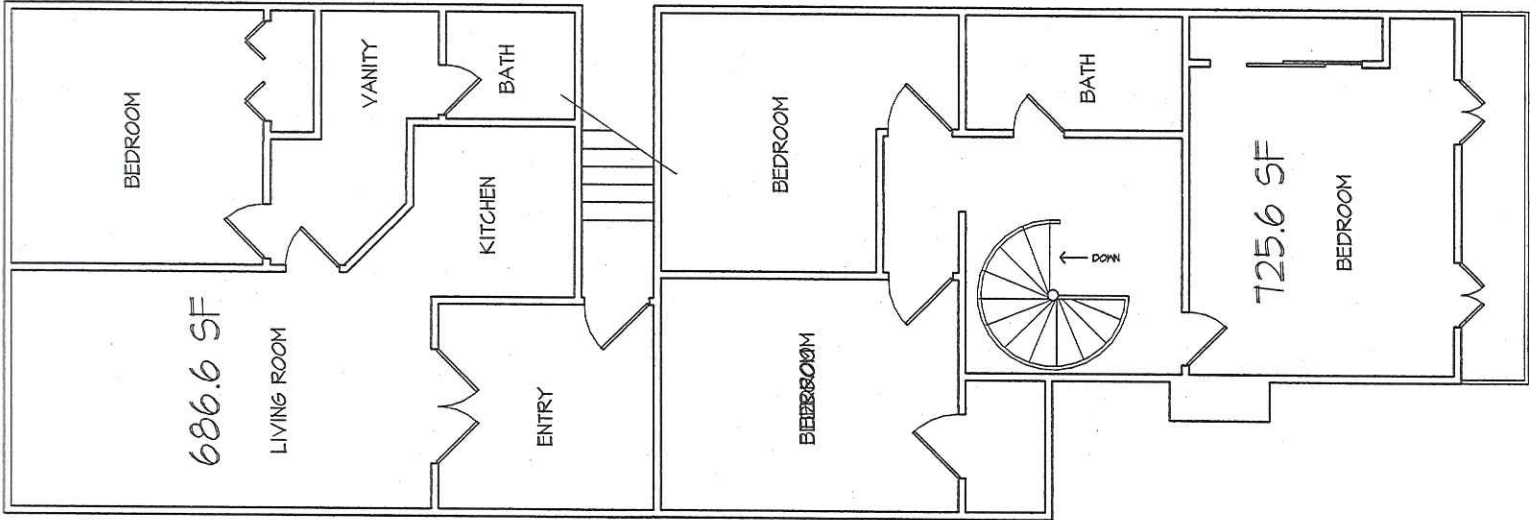
ELEVATIONS HEREON ARE REFERENCED TO
ORANGE COUNTY BENCH MARK OCS
TOPOGRAPHIC SURVEY FOR
ARCHITECTURAL PURPOSES ONLY
JANE BAKMAN

BM NB3-15-70 ELEV. - 7.986 (NAVD 88)

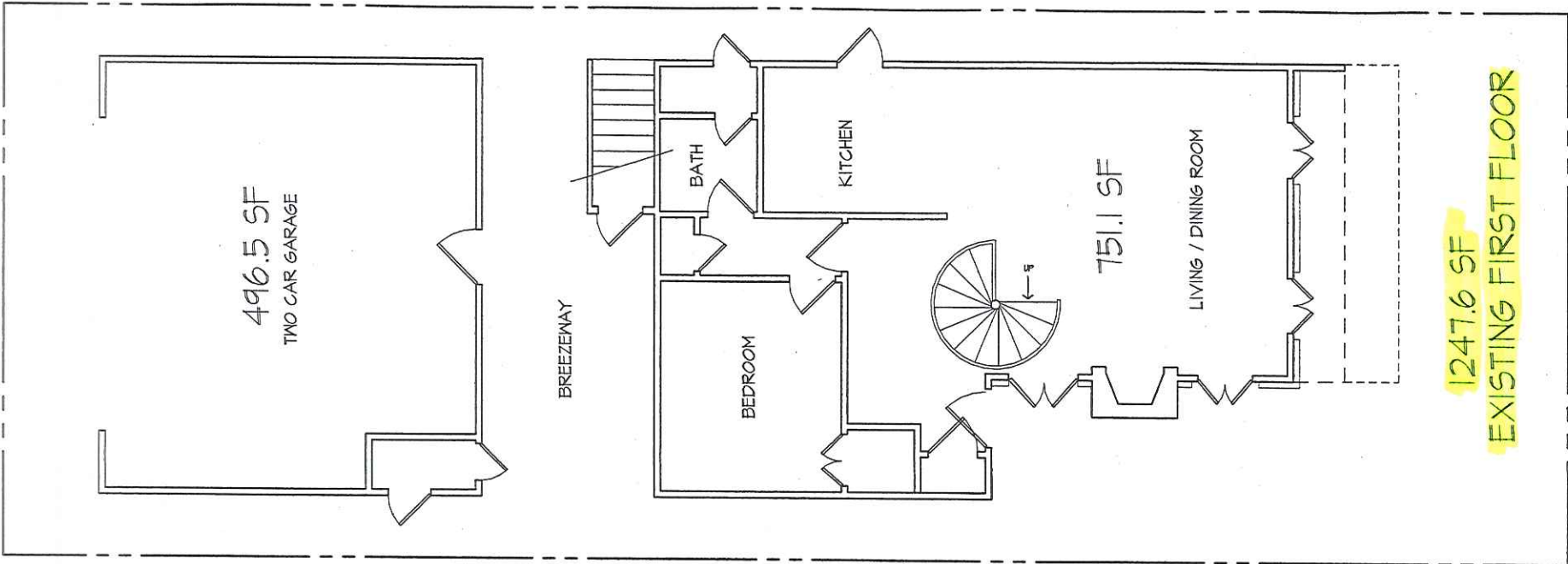
1. Note on the Plans that "A. Public Works Department encroachment permit is required for all public works activities within the public right-of-way. At the time of inspection is required before the Building Department Permit Final can be issued. At the time of Public Works Department inspection, if any unsafe existing public improvements surrounding the site is damaged, new unsafe sidewalk, curb and gutter, and alley/street pavement will be required and 100% paid by the contractor. Sold determination and the extent of the repair work shall be made at the discretion of the Public Works Inspector."
2. Note on the Plans that an approved encroachment permit is required for all non-work activities within the public right-of-way.
3. Note on the Plans that a City encroachment agreement is required for all non-standard private improvements within the public right-of-way.
4. Property depicting the public right of way. As shown on the drainage plans and City improvement plan (attached), the property line is located 8 foot back from the curb face including a 4 foot sidewalk and 2 foot reverse roadway.
5. Install landscaping within the 2 foot reverse pathway and eliminate the low wall and stairs.

REVISED PLANS

1412.2 SF
EXISTING SECOND FLOOR
TOTAL SF = 2659.8



1247.6 SF
EXISTING FIRST FLOOR

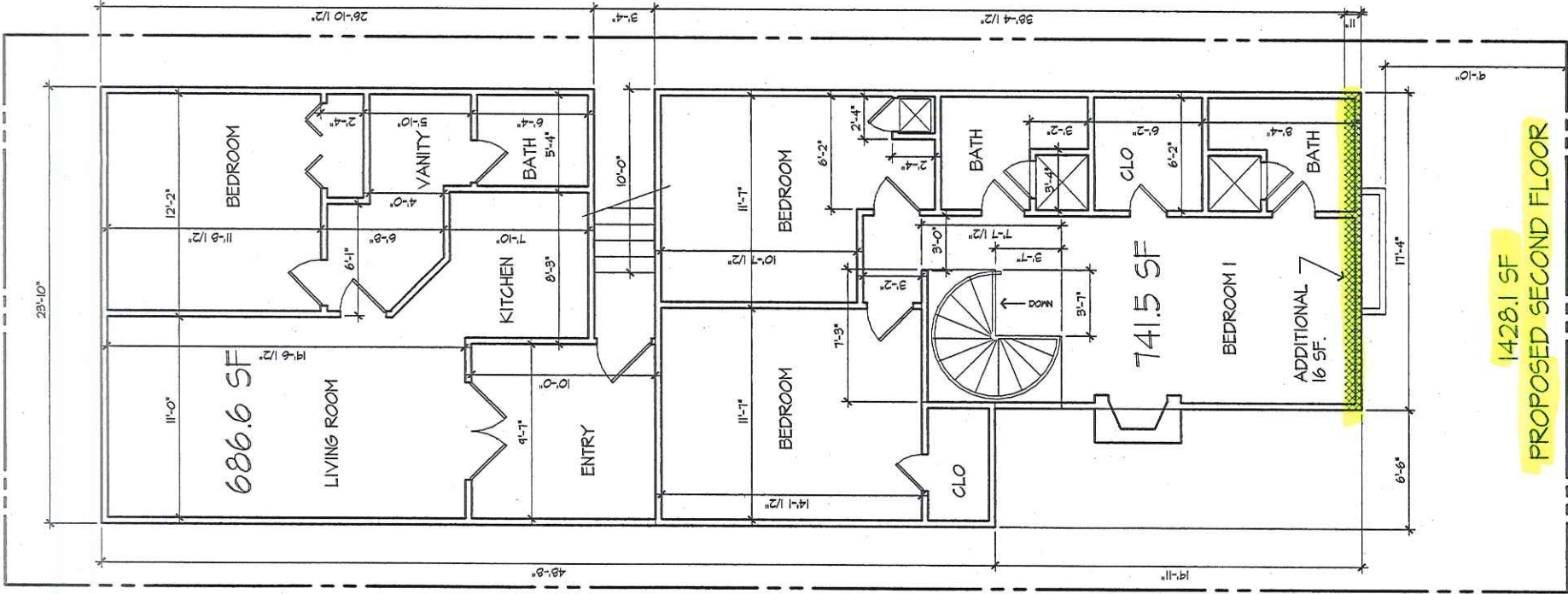
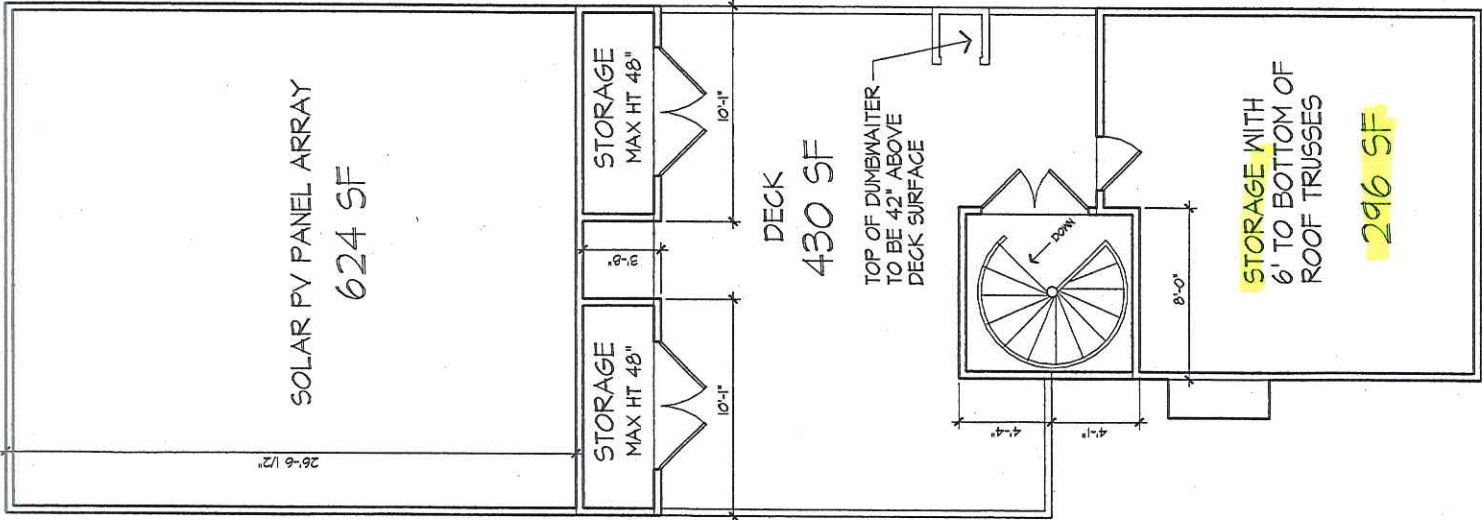


DATE 06/05/15 FILE NO. BAKMAN SHEET	ARCHITECT Barry Walker, Architect P.O. Box 11658 Newport Beach, California 92658 949.246.4085 fax 714.549.1495	SHEET TITLE Existing Plans First Floor and Second Floor	OWNER Bakman Residence Remodel 219 Diamond Avenue Balboa Island, California	REV. DATE REVISION
---	--	--	--	--------------------

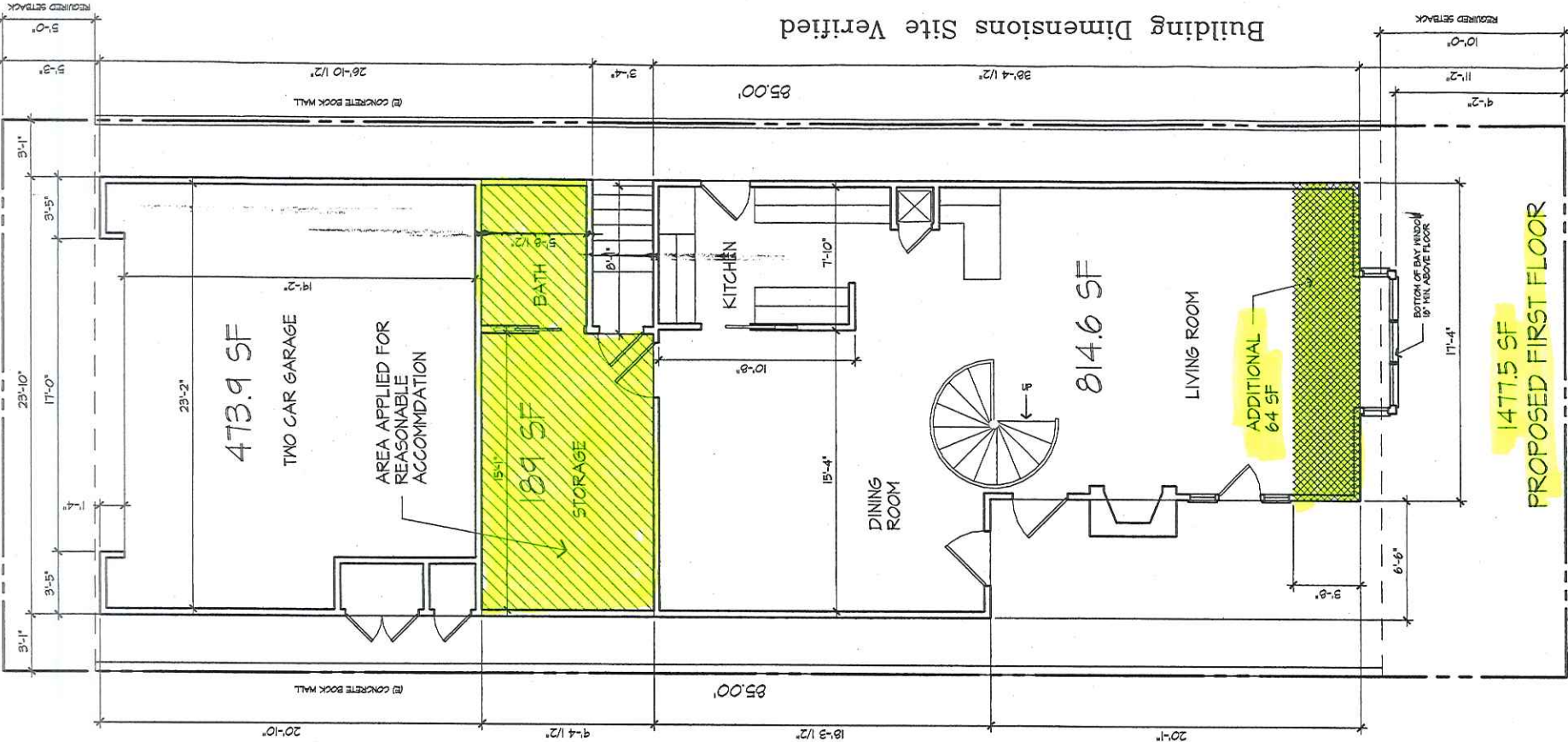
THESE DRAWINGS, SPECIFICATIONS AND CALCULATIONS ARE COPYRIGHTED INSTRUMENTS OF SERVICE. THEIR USE IS LIMITED TO THE PROJECT FOR WHICH THEY WERE ORIGINALLY PREPARED. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER.

REVISED PLANS

0 SF HABITABLE
PROPOSED DECK/STORAGE



TOTAL SF = 2905.6



Building Dimensions Site Verified

ARCHITECT Barry Walker, Architect P.O. Box 11658 Newport Beach, California 92658 949.246.4085 fax 714.549.1495	SHEET TITLE Dimensional Plans First Floor and Second Floor Roof Deck/Storage	OWNER Bakman Residence Remodel 219 Diamond Avenue Balboa Island, California	REV. DATE REVISION
NOT VALID UNLESS SIGNED IN RED			
DATE 06/03/15 FILE NO. BAGMAN	SHEET 8B		

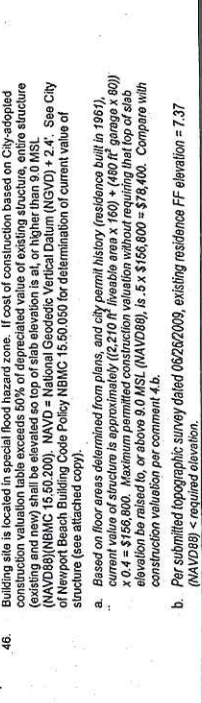
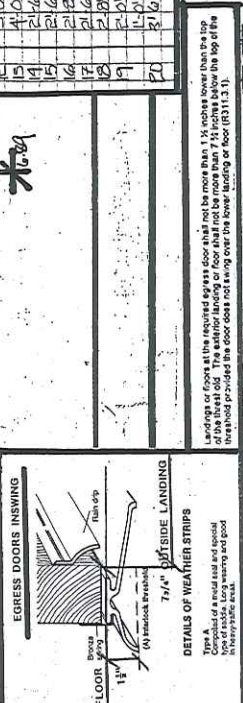
- $7.5 \div 2 = 3.75 \times 15.87 = 59.512 \div 12 = 4.96'$
- RIDGE = 29'0"
- DROP = 4.96'

MIDPOINT = $29.00 - 4.96 = 24.04'$

WINDOW SCHEDULE						
SYMBOL	WIDTH	HEIGHT	MATERIAL	TYPE	QUANTITY	REMARKS
A	2'-0"	6'-0"	WOOD	ANNING	1	BOX DAY 10' PROTECTIVE LILLIES 1/2" 2 PLUM X 2 1/2" ANNING 6 1/2" X 2 1/2" ANNING
B	2'-0"	4'-0"	"	DOUBLE HUNG	2	3 LITES
C	2'-0"	4'-0"	"	"	2	"
D	2'-0"	4'-0"	"	HOPPER	2	4 LITES
E	2'-0"	4'-0"	"	CASING	1	4 LITES
F	2'-0"	4'-0"	"	"	1	4 LITES
G	2'-0"	5'-0"	"	STATUE	1	4 LITES
H	2'-0"	5'-0"	"	DOUBLE HUNG	2	4 LITES
I	2'-0"	4'-0"	"	ANNING	1	4 LITES
J	2'-0"	4'-0"	"	DOUBLE HUNG	2	4 LITES
K	2'-0"	4'-0"	"	CASING	2	4 LITES
L	2'-0"	4'-0"	"	DOUBLE HUNG	2	4 LITES

EXTERIOR WALLS	<ul style="list-style-type: none"> • 4"Ø ADDITIONAL NORTH WALL CONSTRUCTED OF GP DENSGLASS 5/8" THICKNESS AND STUCCO TO CORRESPOND WITH EXISTING WALL • SOUTH WALL INSET 9"Ø FROM PROPERTY LINE CONSTRUCTED OF GP DENSGLASS 5/8" THICKNESS AND/OR STUCCO BRICK • PACING BRICK PAVERS. FRONT OF STRUCTURE ADHERED VENEER 15 Pcf MAX • ALL OTHER PONY WALLS CONSTRUCTED OF GP DENSGLASS 5/8" THICKNESS AND STUCCO • SUCH CONSTRUCTION IS OF FIRE-RESISTANCE RATED 1 HOUR CONSTRUCTION PER R302.1 (I) WITHOUT SPRINKLER SYSTEM • REFERENCE SHEETS 25, 26, 27 • INSTALLATION 5/8" TYPE "X" GYPBOARD INSIDE EXTERIOR WALLS
----------------	--

JANE BAKMAN 219 DIAMOND AVE. NEWPORT BEACH	DRAWN BY <i>J. Bakman</i> CHECKED DATE <i>4-25-2011</i> SCALE	SHEET 17.
--	---	--------------



REVISED PLANS

SOUTH ELEVATION SCOPE OF WORK

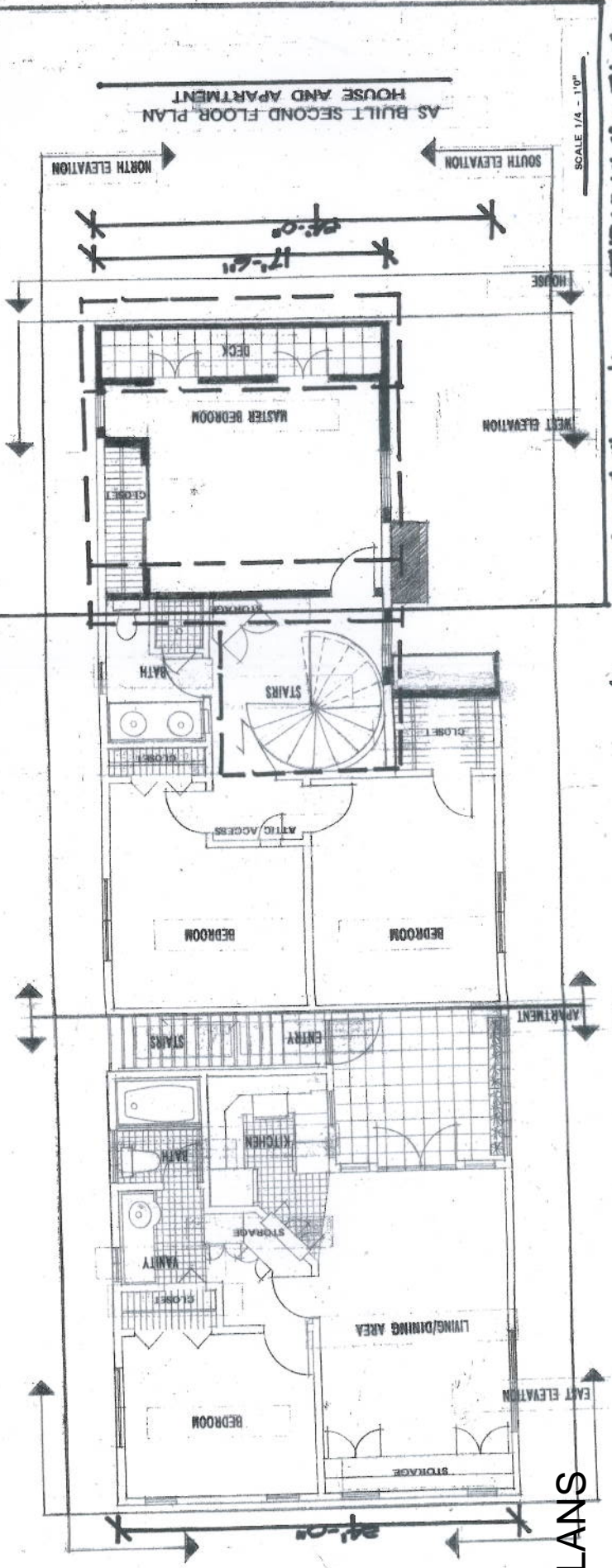
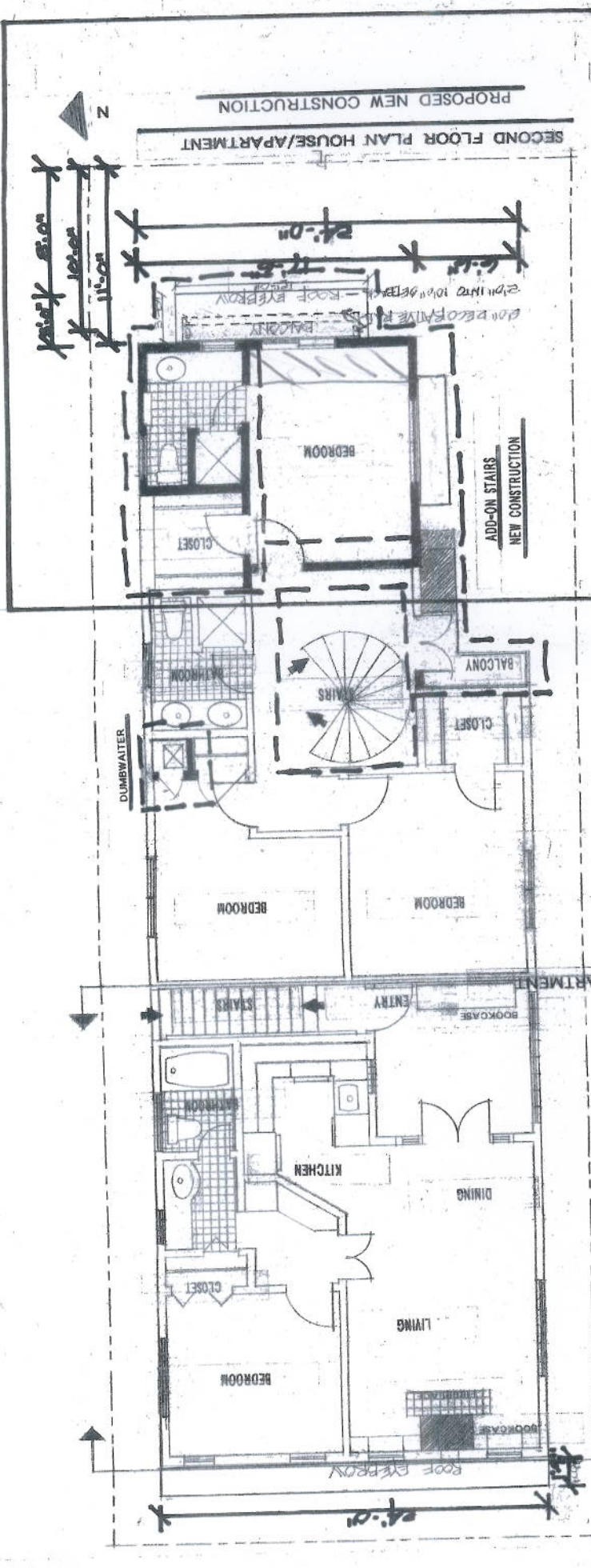
EXISTING 2ND FLOOR
1376

2ND FLOOR
addition
43 #

0' = 9' 10" 1375.5 ft Old
SECOND FLOOR PLAN

OLD PLANS

OLD PLANS



21'6" x 17'6" K STAIRS=PI-0.11-5110-9710
new 1419.25 #

47'-6" x 24'-0"



- * REMOVE DOWNSTAIRS BEDROOM, BATHROOM, AND ADD 11.5 SQ FT TO IMPROVE FIRST FLOOR ACCESSIBILITY AND USABILITY FOR DISABLED PEOPLE
- * IMPROVE EXISTING KITCHEN SPACE AND REPLACE

4881
variation
of
series
/ wood at
Bath

Existing 1st
Floor
1218

70
of addition
Floor is 1st

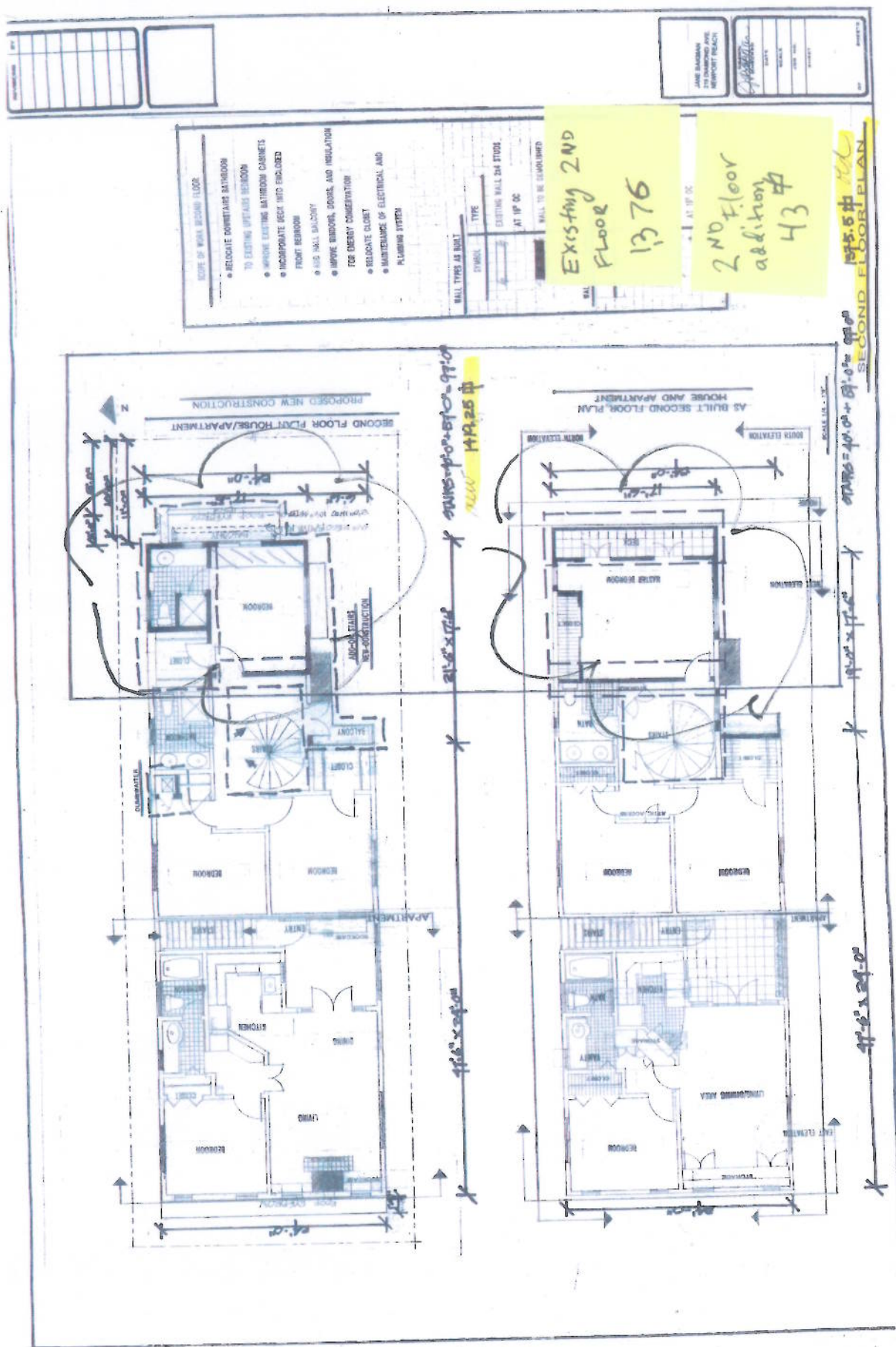
ACKNOWLEDGMENTS

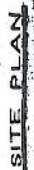
- ADDITION OF SWEETWAY FOR STORAGE AND SA'ROOM TO FIRST FLOOR INTERIOR
- EXISTING 10FT 2WLI
- ALLOWED 50FT 3TOS
- ADDITIONAL 188 30FT

LOW COST WITH REASONABLE ACCOMMODATION 2053

[illegible]

JAMES BARNARD
219 BIRCHWOOD AVE
NEWPORT BEACH





- HOUSE 219 DIAMOND AVENUE BALBOA ISLAND
- LOT SIZE 30'0" WIDE X 85'0" LONG
- 10'0" X 30'0" FRONT SETBACK
- 2'0" OF 10'0" FRONT SETBACK LANDSCAPED
- ADJACENT TO DIAMOND SIDEWALK
- DIAMOND STREET LIGHT FRONT SOUTHEAST CORNER
- 5'0" X 30'0" BACK APRON ADJACENT ALLEY
- WATER METERS BACK NORTHWEST CORNER
- WATER SEWER BACK NORTHWEST CORNER
- 30'0" DUE NORTH OF BACK NORTHWEST CORNER
- SOUTHERN CALIFORNIA ELECTRICAL CONNECTION
- GAS METERS BACK SOUTHWEST CORNER
- DIAMOND/RUBY ALLEY ACCESS TO ATTACHED GARAGE

USDA BUILDING INFO OCCUPANCY GROUP, "B" CONSTRUCTION TYPE, 3 STORY

[illegible]



J. Stephen Torrey, Jr
217 Diamond Ave
Balboa Island, CA 92662

May 27, 2013

Judge John C Woolley, Hearing Officer
City of Newport Beach

Re: Jane Bakman Residence – 219 Diamond Ave, Balboa Island
Reasonable Accommodation No. RA2011-002

As owners of the property just south of the referenced property, and unable to attend the May 30th hearing in person, we would like to make the following comments:

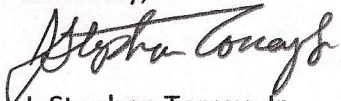
-In 2012, we completed our home remodel of two bathrooms and installed an elevator, all for handicap access reasons. Our architect was able to accomplish this without adding any square footage to the structure.

-We welcome the remodel of the Bakman residence with handicap access so that Virginia Bakman will be able to move from Fresno into the home with her daughter. We believe this can be accomplished without a third story or variances to City code.

-We encourage the City of Newport Beach to allow the Bakmans to remodel their home to accommodate Virginia and any person with disabilities. We're concerned that it has taken many years for the City and the Bakmans to come to terms on a remodel plan, and having seen construction fencing and the deteriorating exterior, we would appreciate a speedy plan to return the home to a pleasant condition.

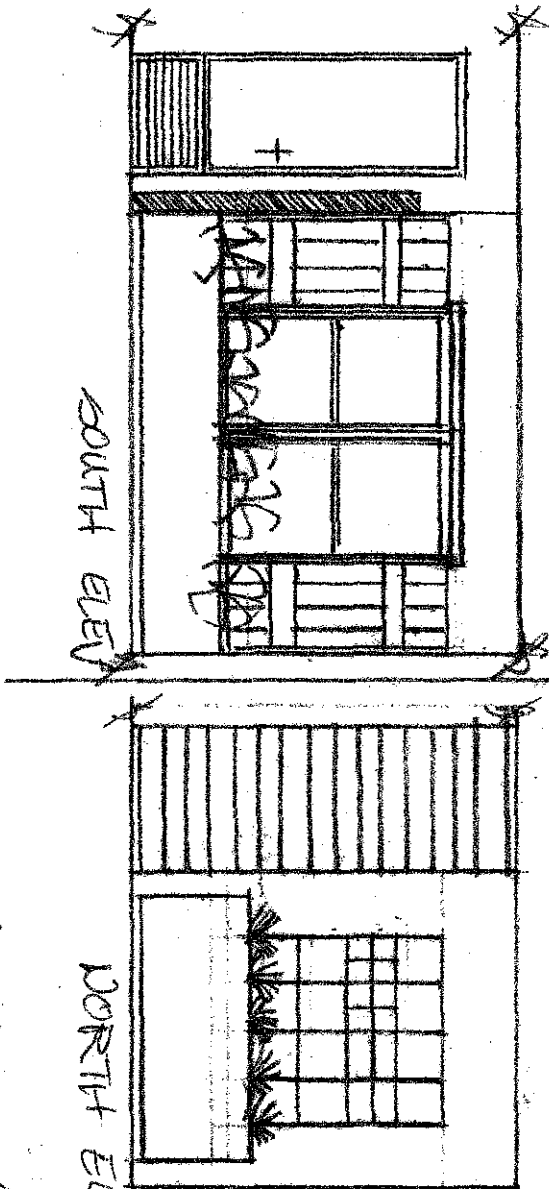
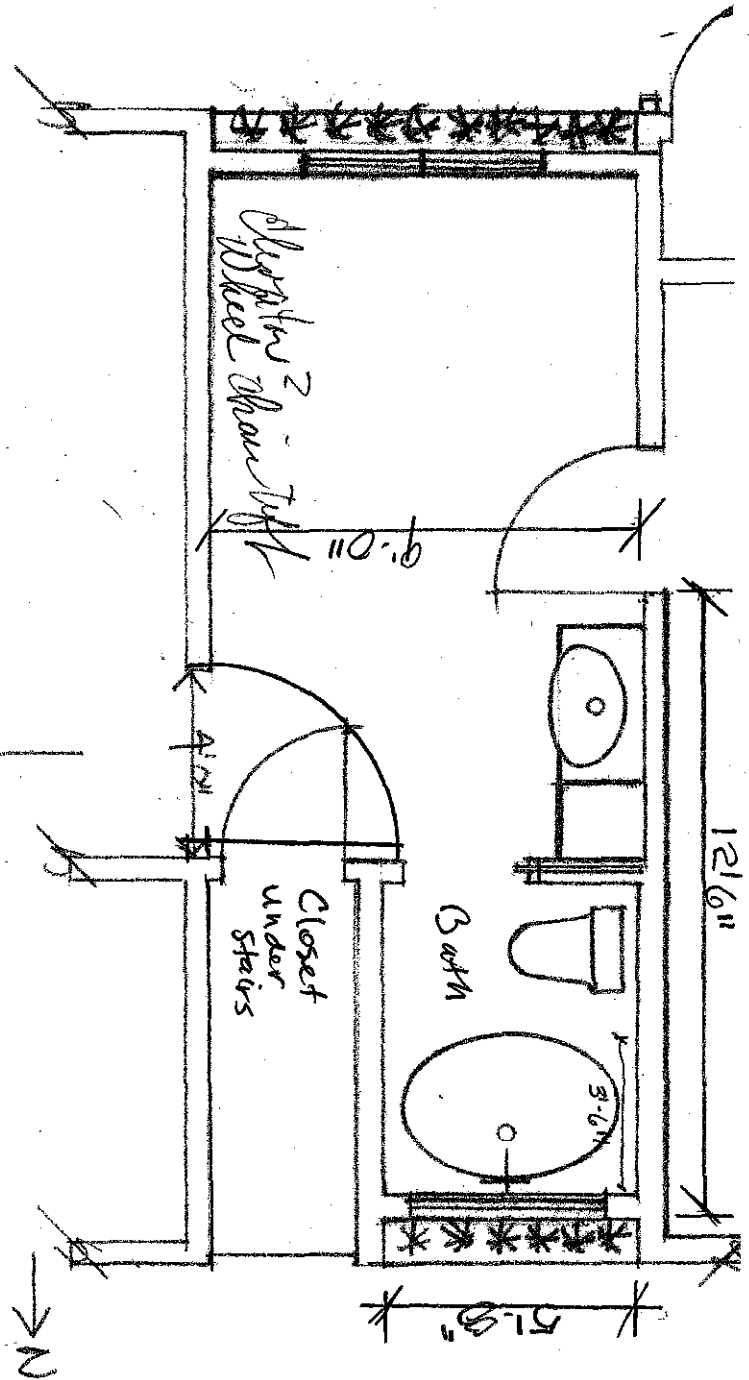
We encourage both parties to agree on a specific remodel plan for accessibility that meets within city building codes.

Sincerely,



J. Stephen Torrey, Jr.

Cc: Kathy Torrey, Mike Torrey and Stephanie Sanguinetti



Rec'd @ Public Hearing
 May 30, 2013
 Bathroom
 1'0"